Volume 5

Pages 957 - 1191

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO, MAGISTRATE JUDGE

SANFORD WADLER,)
)
Plaintiff,)
)
VS.) NO. C 15-02356 JCS
)
BIO-RAD LABORATORIES, INC.,)
et al.,)
) San Francisco, California
Defendants.)

Tuesday, January 24, 2017

TRANSCRIPT OF PROCEEDINGS

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Official Reporters, U.S. District Court

I N D E X

Tuesday, January 24, 2017 - Volume 5

PLAINTIFF'S WITNESSES	PAGE	VOL.
MODEL, ROSANNE		
(SWORN)	972	5
Direct Examination by Mr. Labar	973	5
Cross-Examination by Mr. Potter	983	5
Redirect Examination by Mr. Labar	995	5
OGUS, PH.D., MARGO RICH		
(SWORN)	998	5
Direct Examination by Mr. Clune	998	5
Cross-Examination by Mr. Asperger	1012	5
Redirect Examination by Mr. Clune	1028	5
CHIU, WEI		
(SWORN)	1032	5
Direct Examination by Mr. Clune	1032	5
Cross Examination by Mr. Landes	1050	5
Redirect Examination by Mr. Clune	1070	5
SCHWARTZ, ALICE		
TESTIMONY READ	1077	5
HILLMAN, ALBERT		
TESTIMONY READ	1081	5
DRAPEAU, LOUIS		
VIDEOTAPED TESTIMONY	1086	5

DEFENDANTS' WITNESSES	PAGE	VOL.
NORTON, PATRICK MICHAEL		
(SWORN)	1104	5
Direct Examination by Mr. Asperger	1104	5

E X H I B I T S

TRIAL EXHIBITS	IDEN	EVID	VOL.
36		1115	5
46			5

I N D E X

E X H I B I T S

TRIAL EXHIBITS	IDEN	EVID	VOL.
49		1190	5
50		1160	5
109			5
124		1160	5
125		1160	5
126		1160	5
127		1160	5
128		1160	5
129		1160	5
130		1160	5
157		982	5

Tuesday - January 24, 2017 **8:06 a.m.**

P R O C E E D I N G S

(The following proceedings were held outside of the presence of the Jury)

THE COURT: Come to order, please. What's up?

(Counsel greet the Court)

THE COURT: It's a colloquial. Any issues we need to address before today's witnesses?

MR. POTTER: Yes, Your Honor. We have a couple on our end. One is merely a housekeeping item, Judge, which I think is going to be good news for all concerned, in terms of the scheduling.

THE COURT: Oh, yeah.

MR. POTTER: We're proceeding at a good pace.

THE COURT: Yeah.

MR. POTTER: And I think, Your Honor, with a high level of confidence there's always -- I think by Monday we are going to be resting.

The one issue, though, I want to bring to the Court's attention in terms of scheduling is that the way that the schedule is structured presently -- we did an estimate of time and everything -- it looks like in terms of the present slate of witnesses there is a possibility that we may be reaching a point Thursday afternoon in which our next two witnesses are both out-of-town witnesses.

One of the witnesses is -- resides in New York, and is in

New York, and then the other witness is here but is actually on travel. And with the Court's permission, we would ask that if that occurs, we have the opportunity to resume Monday morning with those two out-of-town witnesses.

THE COURT: So, the other -- let me just add, let me throw in another complication into your schedule which may, may not --

MR. POTTER: Sure.

THE COURT: So Monday is going to be an odd day for me because I have reentry court all afternoon. Starts at -- well, a meeting with the reentry team starting at 12:30, and then followed by court. And that will take up the rest of the afternoon. So we've only got a half day Monday.

If the schedule is as you suggest, maybe we should take that morning to do jury instructions and verdict form, finish up the evidence Tuesday morning and close Tuesday whenever we finish up the evidence. That doesn't respond directly to your question about scheduling out-of-town witnesses, but that is a possibility.

MR. POTTER: That would work well for us. In fact, Your Honor, actually one out-of-town witness would be greatly pleased if we proceeded along that schedule.

THE COURT: I see.

What's your thought?

MR. LABAR: That sounds okay with us, Judge. We do have potential rebuttal experts, but they will both be fairly brief.

THE COURT: This would be thereafter, right?

MR. LABAR: Okay.

THE COURT: So in terms of your -- let's see how it goes. But as currently envisioned, I don't have a problem with there being a little bit of a gap at the end of Thursday to accommodate the out-of-town witnesses since we are a week ahead of schedule, or at least a few days ahead of schedule.

MR. POTTER: And then we will resume with witnesses again on Tuesday morning.

THE COURT: And witnesses will resume again on Tuesday morning.

MR. POTTER: Yeah.

THE COURT: Unless something changes dramatically, do it that way, and do the instructions on -- instruction conference in the morning of Tuesday -- of Monday.

MR. LABAR: Monday.

THE COURT: Monday morning. Monday afternoon would be dark, too.

MR. POTTER: Your Honor, then in terms of legal issues, that that -- having submitted to the Court, I think there are really just two. We had a substantial, I think, agreement on the exhibits for Ms. Model. I think there's only one exhibit that is potentially in dispute, to which we would object.

There is a larger issue, and it goes back to the Court's ruling on the motion in limine. With respect to the motion in limine to exclude Ms. Model, the Court may recall that it was granted in part and denied in part.

THE COURT: Yeah.

MR. POTTER: And the Court stated from the beginning very emphatically that the testimony could only go to FCPA compliance; that it couldn't go to compliance in general. And there was, I think, in our motion in limine a reference to the fact that they couldn't refer to the fact she worked in a windowless office and things like that.

In opening statement there was again a reference to that windowless office. And I'm not fixating on that, per se, but what I'm really I guess driving at on a larger level is that we hope with respect to the direct of Ms. Model -- and certainly the cross would adhere to this -- that the questions are tailored in accordance with the Court's ruling. Namely, that it goes specifically to FCPA compliance, not compliance writ large, or compliance in general.

So I just want to reinforce our concern, in light of the opening statement, and just, I guess, inform the Court that if it goes beyond the Court's ruling, we will be objecting.

THE COURT: Presumably if it goes beyond the Court's ruling, I'll be sustaining those objections.

But why don't I hear from you. What's your plan?

MR. LABAR: Certainly, Your Honor. I have Your Honor's ruling, I have it highlighted, underlined. Quote (As read):

"Any testimony she has about management attitude towards FCPA compliance."

So that's how the questions will be tailored, Your Honor.

I do want to note, though, Ms. Madden yesterday testified to a culture of nonconfrontation at Bio-Rad generally. But as I said, we will talk only about FCPA compliance.

THE COURT: The question isn't edges, right? So what is she going to say that -- what testimony are you going to elicit about the culture -- I mean, you can elicit testimony that the company -- that's relevant to the company's approach to FCPA compliance. But not to other things that might affect her job, et cetera, et cetera.

MR. LABAR: Your Honor, I haven't been able to speak with Ms. Model. She's been represented bring counsel at Skadden.

THE COURT: But you're going to ask questions. So what do you expect to ask her about?

MR. LABAR: "What resources were you -- were made available to you for your FCPA compliance duties?"

THE COURT: Okay. As long as the questions are framed like that, that they are specific to FCPA compliance duties, I think that's fine. And there will be -- you know, things that are unrelated to FCPA compliance duties are out of bounds. There will be edges, I suppose, inevitably, which I'll just rule on as they come across.

Yeah.

MR. LABAR: One clarification, Judge. If I say to her, "What were your FCPA resources," and she says, "The same as all of my other compliance resources," then I can say "What were those resources?"

THE COURT: Well, if there's a foundation that these resources were for FCPA compliance, then that's fine.

MR. LABAR: Okay. Thank you, Judge.

THE COURT: That was part one. Part two was some specific exhibit?

MR. POTTER: Yes, Your Honor. Part 2 is the only remaining exhibit related to 157 is the -- a handwritten note that apparently Ms. Model sent to Mr. Wadler. I don't know if the Court has it in front of it.

THE COURT: I do. It's 26 June, 2013, a note presumably from Ms. Model to Mr. Wadler. After his termination. What's this happening?

MR. LABAR: Your Honor, there's been substantial testimony and there will continue to be testimony that nobody liked Mr. Wadler, he was a bad guy, and nobody worked well with him. And part of the testimony that we are going to elicit from Ms. Model is that she worked well with him. And that she actually sent him a Hallmark greeting card after he left, wishing him well.

MR. POTTER: It's irrelevant. It's completely irrelevant.

MR. LABAR: I'm happy to trade --

THE COURT: I don't know. It's on it -- that he got along with her, you're not objecting to that.

MR. POTTER: That's actually a complicated question. Whether she can describe her working relationships. But this is sort of a poignant card after somebody's been terminated.

THE COURT: No, I understand. But I'm trying to establish some parallels here.

MR. POTTER: Well --

THE COURT: You agree that she can testify as to her working relationship with him, and that it was a good one, if it was a good one. Right?

MR. POTTER: I think she can testify to that. I think this (Indicating) goes too far.

THE COURT: And just like yesterday's witness testified a working relationship was terrible in very specific ways. Okay. In opening statement you put an email up on the board that says: "There is a god."

MR. POTTER: Uh-huh.

THE COURT: The aftermath, after-the-effect reaction to the firing, why isn't this parallel, same kind of subject as what you put up on the board?

MR. POTTER: Well, I think the difference is because the con- -- we have to prove what conduct gave rise to his termination. And the fact that he may have been nice to other employees on other occasions is not responsive to the fact that there's evidence showing that he was belligerent with a series of employees that gave rise to his termination.

THE COURT: Okay. I'm not entirely sure that's accurate. But I think it's a 403 kind of question. And I'm going to allow this exhibit.

MR. POTTER: And Your Honor, just one other --

THE COURT: Yeah, yeah.

MR. POTTER: Final word on Model. And I think the parties are in agreement on this. The Court was also emphatic that there should be no questions surrounding the reasons for Ms. Model's termination from the company --

THE COURT: Yeah, that's in the motion in limine. Yeah.

MR. CLUNE: Kevin Clune.

THE COURT: Yes. Something, Mr. Clune? Yes?

MR. CLUNE: Yes. We had just two issues regarding the experts that were coming up. The first is that they should not be allowed to reference any prior exclusions of the experts. I don't know that they're intending to elicit that testimony, but exclusions in other cases is inadmissible under Rule 403.

There's an excellent opinion from Judge Weinstein, who obviously --

THE COURT: Who?

MR. CLUNE: Judge Winestein, who knows a lot of about evidence, Weinstein.

THE COURT: I took a class from him.

MR. CLUNE: There you go.

THE COURT: I don't think he particularly liked me, actually, my vague recollection is.

MR. ASPERGER: We will make this one easy, Your Honor. We don't intend to do it.

THE COURT: Okay.

MR. CLUNE: And the other is our expert -- do look into the public findings in order to determine in part what Mr. Wadler would have made both in terms of his bonus for the company, which, as testimony has shown, is based on company performance. And so how the company has done since 2013 through 2016 was reflected as a percentage of other prior -- other employee salaries. They also got percentages of their salaries.

And so for 2013 through 2016, for the bonuses, our expert looks to that information in order to determine what Mr. Wadler's bonus would have been, which I think this is imminently reasonable.

And then the second issue is --

THE COURT: What's the issue with that? I mean, there's no -- he can look at whatever he wants. The question is what he's going to say in terms of the specifics. I suppose you're raising that question.

Why are you bringing this to my attention?

MR. CLUNE: Because they had objected previously to our reference to some of these SEC statements as prejudicial. And we just want to make sure that if need be, that we can ask questions about the portions of these SEC statements --

THE COURT: That he relies on?

MR. CLUNE: Right.

MR. ASPERGER: I think it depends on how much they circumscribe it. If they go to top-line numbers, gross income, things like that, then I think it would be inadmissible, and not relevant to the opinion. If it is going to the net figures which don't raise the inflammatory and prejudicial issues, that's a whole 'nother issue, and we don't object to that.

THE COURT: Don't raise the inflammatory and prejudicial issues. I mean, I already let in the top-line numbers.

MR. ASPERGER: This is going to be an issue that's going to come up again, Your Honor, because it's a fine line here. We don't dispute that the company made several billion dollars a year. But it's clearly impermissible to argue --

THE COURT: Gross. So really --

MR. ASPERGER: Gross. Because it's clearly impermissible to argue as a basis for punitive damages, that punitive damages should be awarded based upon top-line numbers.

THE COURT: Well, I understand. But this is an expert report. This expert does not speak to punitive damages.

MR. ASPERGER: Correct. And so I don't think we have an issue here.

THE COURT: Okay.

MR. ASPERGER: I would assume these documents are not going to be admitted into evidence. You're just going to be asking questions about the basis for the opinion.

MR. CLUNE: In terms of -- I think that is generally correct. We are not seeking to admit. We are looking at the summary compensation tables, I should note, which don't -- which aren't the company balance sheets. They separately break out tables that have compensation for named executives.

THE COURT: Uh-huh.

MR. CLUNE: And so, for example, when Mr. Wadler received the exact same amount of stock-related compensation for the past six years of his employment as another employee, one of the things our expert looked to was to see whether or not that employee made the same amount after he left, or how much --

THE COURT: It doesn't sound like that's the --

MR. ASPERGER: I don't object to that.

THE COURT: Okay. Anything else?

MR. POTTER: There's one other issue from us, Your Honor. We filed a brief yesterday with the Court relating to the possibility of using counsel's statement to the Court concerning searching for internet lawyers pursuant to 801(d)(2). I don't know if the Court had an opportunity to review it. I certainly have a copy that I can give to the Court.

But in a nutshell, I think that the issue is summarized succinctly on the third page of the brief.

THE COURT: Yeah, I read it. I don't know if you have a initial reaction. I don't know that we need to deal with this right now. But, I was surprised by Mr. Wadler's testimony, in light of the stipulation.

MR. WAGSTAFFE: And I understand, Your Honor. May I just say, you were here when the circumstances, walking back on a day I couldn't hear, and -- I'm not trying to say that, but what happened -- what Mr. Wadler was prepared to testify was he wasn't looking for an employment lawyer, he was looking for someone to give advice on how to approach the whistleblower -- you know, talking to the Audit Committee.

But I appreciate that. But I haven't had chance to read this, Your Honor.

THE COURT: Why don't you read it. I'm inclined to hold you to your stipulation --

MR. WAGSTAFFE: I understand.

THE COURT: -- in open court, and the question is remedy. I don't know that the remedy that they've come up is the right one. But you can take a look at it; we'll deal with it later.

MR. WAGSTAFFE: I appreciate that. And I appreciate your Honor's approach.

(Off-the-Record discussion between the Court and Clerk)

THE COURT: We're a little early. I'll see you at 8:30. Thank you.

(Recess taken from 8:22 a.m. to 8:36 a.m.)

THE COURT: Please remain seated, come to order. The jury is all here. Let's go.

(The following proceedings were held in the presence of the Jury)

THE COURT: All right. Welcome back, ladies and gentlemen. We are proceeding apace.

Go ahead.

MR. LABAR: Good morning, Your Honor. Plaintiff calls Rosanne Model.

THE COURT: All right.

ROSANNE MODEL, PLAINTIFF'S WITNESS, SWORN

THE CLERK: Have a seat.

THE WITNESS: Thank you.

THE CLERK: Make sure that you speak clearly into the microphone because it acts like a cone. So if you veer away it's harder for my court reporter to hear.

THE WITNESS: Okay.

THE CLERK: There's water for you if you should need it.

Could you please tell me your full name and spell your last name for the record.

THE WITNESS: Sure. I'm sorry. One second. My name is Rosanne Model, M-O-D-E-L.

THE CLERK: Thank you.

THE WITNESS: Thanks.

DIRECT EXAMINATION

BY MR. LABAR

Q Good morning, Ms. Model.
A Good morning.
Q There is water to your left if you need it.
A Thank you.
Q Ms. Model, were you previously the compliance officer at Bio-Rad?
A Yes.
Q And were you in charge of FCPA compliance there?
A Yes.
Q What does the acronym "FCPA" stand for?
A It stands for the United States Foreign Corrupt Practices Act.
Q Did your time at Bio-Rad overlap with Sandy Wadler's time as general counsel?
A Yes, it did.
Q And who was the CEO while you are worked there?
A Norman Schwartz was the CEO, president and chairman of the board.
Q When were you hired at Bio-Rad as the chief compliance officer?
A I started work on December 1st, 2011.
Q Who did you report to?
A Norman Schwartz.

Q What did you understand your job duties at Bio-Rad to be regarding the FCPA?

A So my job duties were described in a job description that was given to me when I was retained, but in general, it was to detect and prevent non-compliance with the FCPA.

Q When you took the job, did you know that Bio-Rad was in the middle of an investigation over FCPA violations when you were hired?

A Yes, I did.

Q How did you feel about that?

A I was very happy about it because as a lawyer, when you have challenging circumstances like that, you learn the most and you contribute the most. And normally in those situations companies are very committed and willing to put -- commit resources for the program.

Q While you worked at Bio-Rad, did Bio-Rad provide you with sufficient resources to do your job related to the FCPA compliance?

A No. And that's not just my opinion. It's also --

THE COURT: So we are going to do this -- sorry to interrupt.

THE WITNESS: Sorry.

THE COURT: But when he asks a question, if you will answer that question, and then he will ask another question.

THE WITNESS: Okay, sorry.

THE COURT: Sounds like a conversation, but it really isn't, as I have said to a number of witnesses.

THE WITNESS: Okay. No.

THE COURT: So -- go ahead.

BY MR. LABAR

Q Next question: Who made the decisions about what resources would be given to you for FCPA compliance?

A My manager.

Q That is Mr. Schwartz?

A Mr. Schwartz. And certain resources were given to me by the Information Technology Department and the Finance Department.

Q When you were hired did anyone else work in the Compliance Department to assist you with FCPA issues?

A No.

Q How long was it before the company hired someone to help you with FCPA issues?

A Twenty-two months.

Q During that time period, did you ask for more resources for FCPA compliance?

A Yes.

Q Who did you ask?

A I asked Mr. Schwartz; I asked the Audit Committee. I spoke to our outside counsel about it.

Q What was Mr. Schwartz's response to your request for more resources?

A I did not get a response.
Q What was the Audit Committee's response?
A They listened, and, um, I -- for 22 months I had no one.
Q What was outside counsel's response?
A They listened, and were empathetic. And said they would see what they could do.
Q When you were hired, did you know that you would not have anyone else in your department for almost two years?
A No.
Q What were you told about the resources you would be given when you were hired?
A I specifically asked that, and I was told I would be given resources.
Q And which countries -- strike that. In how many countries were you responsible for FCPA compliance?
A The -- I was responsible for global compliance. And so that covered all of the countries where Bio-Rad did business. Which was 40-plus countries.
Q And you were the one person doing that work?
A In my department -- well, in my area, reporting to me, yes.
Q Did you have an office that you used for your FCPA compliance?
A Can you -- a physical office?
Q Yes.
A I had -- I had a physical office, yes.

Q Did it have windows?
A No.
MR. POTTER: Objection, Your Honor.
THE COURT: Sustained.
BY MR. LABAR
Q And what administrative support did you get for FCPA compliance?
A I had -- after some weeks, Mr. Schwartz's secretary gave me assistance. And then it became too much for her. And then Mr. Schwartz asked the secretary to his late father, the former chairman, to help me part-time, as well.
Q Did you have a budget related to FCPA compliance?
A I did not have a set budget, no.
Q I would like to ask some questions about working with the Legal Department at Bio-Rad.
Did you collaborate with any of the lawyers in the Legal Department regarding FCPA issues?
A Yes.
Q And who were those lawyers?
A Adam Pressman, Tom Brida, Jesse Schumaker.
Q Did you also work with Mr. Wadler on FCPA issues?
A Occasionally, toward the end of his tenure.
Q Did you ever have any work disputes with Mr. Wadler regarding FCPA issues?
A I did in the beginning.

Q And what were those?
A His secretary had asked my secretary or Mr. Schwartz's secretary to change the way she was doing things.
And I -- I stopped that. Because it would have compounded my already very difficult situation.
Q Regarding lack of resources?
A Correct.
Q Did anyone, anyone else in management affect your ability to conduct your FCPA compliance activities?
A Yes.
Q Who?
A The head of HR, Colleen Corey.
Q Anyone else?
A Can you repeat the question, please?
Q Sure. Did anyone else in management affect your abilities to conduct your FCPA compliance duties?
A Excuse me. There were other folks in management who were not supportive, and at times took their frustration out at me.
Q Who else was non-supportive?
A I would say John Hertia, who became -- at the time had become the head of the clinical diagnostics group. And I think that's it right now. If I think of something else, I'll tell you.
Q How was Colleen Corey not supportive?
A From the very beginning of my tenure at the company, she

stepped in the way of me making changes. And would not allow me to get into matters that were part of my responsibilities.

Q What was Colleen Corey's job at Bio-Rad?

A She's head of HR and a trusted adviser to the CEO.

Q What did John Herlihy (Phonetic) do to make your compliance duties more difficult?

A On a particular matter regarding China, I was not permitting and nor was the local lawyer in China permitting the business people to go forward with a matter. And he called me into his office and was very angry at me. And especially angry at the local lawyer. With respect to the matter.

Q Did he raise his voice or yell at you?

A I don't think he yelled at me, but he was not happy. Not quite understanding the issues that I was concerned about.

Q On the topic of yelling in general, did you ever hear anyone in management at Bio-Rad yell, that you worked with?

A I heard people yell at me, obviously. And I heard Christine Tsingos, the CFO, be disrespectful to her employees. On one occasion she was quite disrespectful to me.

I knew of yelling that was -- that went on. I was told about it. But couldn't hear it from my office. And then there were emails that were -- I would consider yelling.

Q I would like to focus on what you -- people directed at you.

A Uh-huh.

Q Who yelled at you?

A Mr. Schwartz yelled at me.
Q What did he yell at you about?
A He would get exasperated, because I insisted on telling him what I thought the government expected and what the standards were for our compliance program.

And he yelled at me in an Audit Committee meeting with about 25 people in attendance. Because he indicated that I had given materials to him late, and I said that I had not done that. And he got up and pointed his finger at me and said that he didn't want to hear anything from me.
Q Who's Mr. Goetz?
A He is the chief operating officer of the company.
Q Did he ever yell at you?
A Yes.
Q What did he yell at you about?
A Sorry.

THE COURT: Why don't you take a glass of water, might be helpful.

THE WITNESS: Thanks.

THE COURT: Yeah.

THE WITNESS: It was not related -- thanks. It was not related to the Foreign Corrupt Practices Act. It was related to another U.S. law.

MR. POTTER: Your Honor, I'll (Inaudible).

THE COURT: Overruled.

BY MR. LABAR

Q You can answer the question.

A Okay. When I joined the company, my understanding was that -- that I was supposed to focus on ethics and the FCPA and anti-corruption generally.

But in about February or March of 2012, Mr. Schwartz asked me to also take on the creation and implementation of the open payments program. Which is part of the Healthcare Reform Act, which was a regulation that --

Q Thank you for your response.

A So that is what it was about. Thank you.

Q While you worked as compliance officer, were you ever interviewed by an attorney named Patrick Norton?

A No.

Q Were you ever interviewed by anyone from the -- named Martine Beamon?

A No.

Q In regards to Mr. Wadler, were you told that Mr. Wadler would be terminated before it happened?

A No.

Q How did you learn about it?

A I learned about it because Mr. Schwartz came into my office and told me.

Q And what did he tell you?

A He told me that Sandy was no longer with the company.

Q Okay. After Mr. Wadler's termination, did you communicate with Mr. Wadler?
A I did.
Q Okay. What did you do?
A I sent him a card. And I took permission from Mr. Schwartz before I did it.
Q Could you open the white exhibit binder before you to Exhibit 157. There's numbers on the tabs you see before you.
A Sure.
(Request complied with by the Witness)
Q Ma'am, do you recognize Exhibit 157?
A Yes. That's the card.
Q And is it a card you wrote to Mr. Wadler?
A Yes.
MR. LABAR: Your Honor, I would move 157 into evidence.
MR. POTTER: (Inaudible)
THE COURT: Admitted.
(Trial Exhibit 157 received in evidence.)
(Document displayed)
BY MR. LABAR
Q And this is the card you sent to Mr. Wadler after his termination?
A Correct.
Q Why did you do that?
A Because he was my colleague and I wished him well.

MR. LABAR: Thank you. No further questions.

THE COURT: Cross-examination.

MR. POTTER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. POTTER

Q Good morning, Ms. Model.

A Good morning.

MR. POTTER: May I have a minute, Your Honor? I'm sorry.

THE COURT: Yeah.

(Off-the-Record discussion between counsel)

MR. POTTER: Your Honor, may I approach, give the witness --

THE COURT: Yes, of course.

BY MR. POTTER

Q Ms. Model, you joined Bio-Rad on December 1st, 2011. Is that right?

A Yes.

Q And you were coming to the company as the compliance officer in charge of FCPA matters, is that right?

A In charge of the programs and procedures to detect and prevent non-compliance, yeah.

Q And did you come to learn that at a certain point in time while you were at Bio-Rad, Mr. Wadler had submitted to the Audit Committee a memorandum raising FCPA concerns in China?

A I did not know about it at the time.

Q Do you know of it now?

A Yes.
Q Did Mr. Wadler have any discussions with you about the FCPA allegations he identified before submitting that memorandum to the Audit Committee?
A No.
Q Did you have an opportunity to review and comment on Mr. Wadler's memorandum before he submitted it to the Audit Committee?
A No.
Q Did he seek your counsel as to the validity or the integrity of the allegations of that memorandum before he submitted it to the Audit Committee?
A No.
Q He didn't consult with you at all before he submitted that memorandum to the Audit Committee?
A No.
Q You were completely in the dark before he submitted it to the Audit Committee?
A Correct.
Q Ms. Model, let me just ask you, I believe you have Exhibit 145 in front of you. If I can ask you to take a look at it.
(Request complied with by the Witness)
A Yes.
Q Is this your LinkedIn page, Ms. Model?
A Yes, it is.

MR. POTTER: And I would ask to move to admit this, Your Honor.

THE COURT: Any objection?

MR. LABAR: Objection, hearsay.

THE COURT: Sustained.

BY MR. POTTER

Q Does this -- let me ask you some questions just about your experience at Bio-Rad.

Notwithstanding the limitations that you have described, is it fair to say, Ms. Model that in fact, you did accomplish a lot at Bio-Rad with respect to FCPA compliance matters?

A I did, especially -- yes, I did. Uh-huh.

Q And as part of that, you would agree, would you not, that while at Bio-Rad, you built a global team and sustainable program for FCPA matters?

A Correct.

Q You would agree, while at Bio-Rad, you implemented a program to detect and prevent non-compliance?

A Yes.

Q And that while at Bio-Rad, to your credit, you leveraged existing policies and procedures to deter FCPA violations?

A Yes.

Q And all of the things that you did and described didn't exist at Bio-Rad until you came to the company. Fair?

A I would say 90 percent, yes.

Q Okay. Because to your knowledge, prior to you arriving at Bio-Rad, for the most part there was no FCPA compliance system in effect, and you got the compliance, FCPA compliance system up and running.

A There were elements in place. But there was not a system.

Q Okay. And with respect to the -- some of the measures that you accomplished while at Bio-Rad, one of the things that you did was you engaged in FCPA compliance training at Bio-Rad. Right?

A I did.

Q And Ms. Model, before you undertook that role, were you aware that the Legal Department was undertaking that role?

A Yes. Mr. Schwartz asked me to take it over.

Q And so you took it over, so it went from the Legal Department to Compliance. Is that correct?

A And part of it was in HR.

Q Okay. But you, yourself were actively involved in FCPA training while you were at Bio-Rad, right?

A Yes.

Q And it sounds like from your deposition testimony, you traveled the globe, to your credit, in providing FCPA compliance training to Bio-Rad employees. Is that fair?

A I traveled to certain countries during sales meetings so that I could train the most employees at the same time as was possible.

Q Right.
A And I was invited to finance meetings, yes.
Q And as part of your work as Bio-Rad's compliance officer, you traveled to China, is that correct?
A Yes, I did, once.
Q And you conducted an FCPA compliance training program in China, right?
A Yes, I did.
Q You also conducted an FCPA compliance program in Singapore, right?
A Yes, I did.
Q You went down to Mexico and conducted an FCPA compliance program down there, didn't you?
A Yes.
Q And then you went on to Brazil?
A I did.
Q And you conducted an FCPA compliance program in Brazil, right?
A I did.
Q And then you went to Russia and you conducted a FCPA compliance training seminar there, right?
A I did.
Q What about India? Did you go to India and provide FCPA compliance training at India?
A I did.

Q Hungary? Does that ring a bell, going to Hungary and also conducting an FCPA training there?
A Not for sales and marketing folks. For colleagues in the Finance Department.
Q Okay. So with respect to Hungary, it was folks in the Finance Department who received your FCPA compliance training.
A And I -- discussions, yes. And I learned from them as well, yes.
Q Okay. So this was in person, you went to Hungary, actually met with these folks in Hungary?
A Yes.
Q And provided this?
A Yes.
Q And didn't you also go to Italy and also provide FCPA compliance training in Italy?
A I think that was a finance meeting as well.
Q So you provided FCPA compliance training for the finance people in Italy. Is that fair?
A Correct. Correct.
Q And later, conducted FCPA compliance training in Germany?
A No.
Q Did you --
A Uh, I -- I believe that in Germany I may have done a short presentation, yes. And -- yes. Uh-huh.
Q So you did do FCPA compliance in Germany?

A I think so, yes.
Q Okay. And also France, do you recall going to France to provide FCPA compliance training?
A Yes, yes.
Q Now, you were of the view, were you not, that probably the most meaningful or impactful areas where you could provide FCPA training would be with the Sales Department on the one hand, and the Finance Department, were the two primary units that you believed could best be impacted by FCPA compliance training. Correct?
A And Marketing.
Q And, with respect to the Finance Department, taking that up first, the Finance Department was under the supervision of Christine Tsingos, right?
A Correct.
Q And you worked very collaboratively with Ms. Tsingos on FCPA matters, correct?
A Correct.
Q You also received significant support from Bio-Rad's vice-president of sales, Giovanni Magni, correct?
A He was the most supportive of all of senior management.
Q If I remember correctly he was in charge of international sales, right?
A Correct.
Q So his department more than any other department impacted

with potential FCPA issues, correct?
A Yes. And he was extremely supportive from day one, and provided resources to me.
Q Okay. Ms. Model, following the discovery of the FCPA violations in 2009, you were aware that Bio-Rad terminated the personnel who were responsible for those FCPA violations?
MR. LABAR: Objection, lacks foundation.
BY MR. POTTER
Q Or were you aware?
THE COURT: Go ahead. You can answer.
THE WITNESS: Can you repeat the question?
BY MR. POTTER
Q Sure.
Were you aware that Bio-Rad had terminated the individuals who were responsible for prior FCPA violations?
A I think I would be comfortable saying some of.
Q And is that a form of remedial action in your estimation in terms of FCPA compliance?
A Yes.
Q Bio-Rad closed its offices in Vietnam as a result of the FCPA problems, is that fair?
A Yes.
Q And that also is a remedial action, to comply -- remedial action for FCPA concerns?
A Yes.

Q Is that fair?

And you're aware that Bio-Rad added some anti-corruption language while you were at the company? Is that correct?

MR. LABAR: Objection, hearsay.

THE WITNESS: Added it where? I'm not sure I follow you.

BY MR. POTTER

Q Yeah, I'm sorry. Let me make it a little bit crisper.

THE COURT: Rephrase the question.

MR. POTTER: Yeah.

BY MR. POTTER

Q Were you aware, Ms. Model, that Bio-Rad added some FCPA enforcement provisions in their distributor contracts? Were you aware of that?

A Yes.

Q And that is a remedial measure --

A Yes.

Q -- under the FCPA program?

A Yes.

Q Ms. Model, in terms of the personnel that you have working in your department, is it fair to say that by the time you left the compliance unit, you had five people under you, working under you in your department?

A Yes.

Q And in addition to those five people who worked under you, there was another layer of compliance support, FCPA compliance,

at Bio-Rad, and that related to the Compliance Champions?
A Hold on, I'm sorry. Can you go back to the question about the five, please?
Q Sure.
A Can you ask me that question? Were you asking me that question about how many people, could you mention -- say the question again, please?
Q Sure. Let me see if I can break it out for you.
First of all, are you aware of the Compliance Champions?
A Yes.
Q Okay.
A Yes, I am.
Q And there were six Compliance Champions across the globe to assist on FCPA matters while you were the head of compliance, is that correct?
A They were not in my department. They were funded by international sales. They provided part-time resources to me. But they were not in my head count.
Q Fair enough.
A And neither were the five that you mentioned, dedicated to Foreign Corrupt Practices Act. That is why I wanted to go back to that question.
Q Fair enough.
A Okay.
Q In the organizational structure, duly noted. But I just

want to ask you more substantively, were you aware that these Compliance Champions were assisting Bio-Rad with respect to FCPA matters?

A Yes. They did at a low level.

Q And the four or five people that were in Hercules, they were also assisting Bio-Rad with respect to FCPA matters even if they were not necessarily in your particular department?

A No. They were not helping with FCPA matters. Two were -- were full -- were full-time headcounts dedicated to other federal compliance matters.

Q Okay.

A One was, I would say, 70 percent anti-corruption. And another one was also just, I would say 50 percent related to investigations of any -- of any sort.

So I did not have five headcount related to FCPA or anti-corruption, generally.

Q When you left the company your last year there, was your budget around $900,000?

A It was.

Q Okay.

A For salaries and compensation.

Q Okay. Sure. The Compliance Champions, just so I can understand that a little bit better, these were individuals who were embedded in certain regions of the country, the world, is that right?

A Right. And then had other obligations as well.

Q And, and we're only -- you have to focus on FCPA for this presentation. Can you tell us which six regions of the world these Compliance Champions were stationed?

A Sure. So there was one for Japan, one on and off for China. One for Europe. Latin America emerging markets. I think that's it.

Q Okay.

A Uh-huh.

Q And their role was to detect and prevent compliance risks, correct?

A They were part of the -- part of the systems put in place for that. They helped with communication. They helped review requests which required ongoing monitoring and a higher level of scrutiny.

Q Okay. Just one last question, Ms. Model, in terms of your -- just your departure from the company.

Is it fair to say that you were terminated, but then ultimately negotiated a settlement ending your relationship with Bio-Rad?

A I think it's --

THE COURT: Wait, there's an objection.

MR. LABAR: Objection, Your Honor. Motion in limine.

THE COURT: Sustained.

MR. POTTER: Okay. I have no further questions, then, Your Honor.

REDIRECT EXAMINATION

BY MR. LABAR

Q Ms. Model, was it your job duty to investigate FCPA violations?

A No.

Q Okay. You were asked a question about what you knew about what Mr. Wadler reported.

Was it your understanding that it was company policy that people had to bring FCPA violation complaints to you first?

A No.

Q In fact, wasn't there a hotline people could call?

A There was.

Q As a FCPA compliance officer, would you say that anonymous complaints might be appropriate sometimes?

A Sure. It's up to the individual who's making the complaint. And as long as the law permits it and the country, that's fine.

Q You were asked some questions about what you accomplished at Bio-Rad. Could you have accomplished more with more resources?

A Definitely.

Q You were asked some questions about training. You said some of that training was done with Ms. Corey? Is that right?

A Through her department, yes.

Q Did Ms. Corey ever express any feelings to you about her belief over what she should control versus you in regards to training?

MR. POTTER: Objection, hearsay.

THE COURT: Sustained.

MR. LABAR: Ms. Corey?

THE COURT: What?

MR. LABAR: Sorry, Your Honor.

THE COURT: Could you rephrase that?

MR. LABAR: I'm sorry.

BY MR. LABAR

Q What did Ms. Corey say to you about how she felt the training should be divvied up between the two of you?

A She told me that she was in charge of anything and everything that related to employees at Bio-Rad. And when I asked -- when I asked to be involved in the choice of training, because that's an important aspect of what I was responsible for, she -- she would not permit that.

Q You were asked about some training compliance you did in China. Do you recall that?

A Yes.

Q Did you have any specific concerns about compliance -- FCPA compliance in China?

A I did.

Q What were they?

MR. POTTER: Objection, Your Honor. Relevance, the motion --

THE COURT: Sustained.

BY MR. LABAR

Q And you were asked -- he asked you a question about people that were terminated as a result of the FCPA violations and the government investigation. Do you recall that?

A Yes.

Q And you said that some of the people --

A Uh-huh.

Q -- were terminated.

A Correct.

Q Who remained?

A I think there were questions about some people who remained in the company. And who were not -- who were not separated.

Q Is it fair to say, ma'am, at a certain level, making sure that the FCPA is not violated is part of the everyone's job at Bio-Rad, right?

A Yes.

Q Including the CEO?

A Yes.

MR. LABAR: Thank you. No further questions.

MR. POTTER: We have no questions, Your Honor.

THE COURT: Okay. Thank you very much, ma'am. You can step down.

THE WITNESS: Thanks.

(Witness excused)

MR. CLUNE: Your Honor, we would call Dr. Margo Ogus.

THE COURT: Okay.

MARGO RICH OGUS, Ph.D., PLAINTIFF'S WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Thank you. Have a seat.

After you get settled, please speak clearly into the microphone for our court reporter. And could you please state your full name for the record, and spell your last name.

THE WITNESS: Yes. Margo Rich Ogus, O-G-U-S.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. CLUNE

Q Good morning, Dr. Ogus. Could you please tell us your profession?

A I'm an economist.

Q And could you give us a brief description of your educational background.

A I have a Bachelor of Science degree in agricultural economics obtained at Cornell University in 1973. And a master of arts and Ph.D., both in applied economics, both earned at Stanford University. The master's in 1975 and the doctorate in 1980.

Q And where are you currently employed?

A At an economic consulting firm in Palo Alto, my own, called Economic Solutions.

Q And what do you do at Economic Solutions?
A I'm retained, similarly to this case, by attorneys representing plaintiffs and attorneys representing defendants, to calculate economic loss to individuals in civil litigation in a courtroom setting like this.
Q How long have you been doing this sort of work?
A I have been doing this since 1985, so over 30 years.
Q And how long have you been doing analysis of wage claims in particular, and other employment benefits?
A Over that same period.
Q How many cases have you consulted on during that time?
A I haven't counted them up, but I would say thousands.
Q And what proportion of your work is done for plaintiffs like Mr. Wadler, as opposed to defendants?
A I'm retained about equally by attorneys representing plaintiffs and attorneys representing defendants. And that's been the case for quite a while. Most of my career.
MR. CLUNE: Your Honor, I would like to tender Dr. Ogus as an expert witness in Mr. Wadler's lost earnings.
THE COURT: Go ahead and ask opinion questions.
MR. CLUNE: Okay.
BY MR. CLUNE
Q Dr. Ogus, were you retained by my firm?
A I was.
Q And what were you retained to do?

A I was asked to calculate Mr. Wadler's economic loss, specifically his loss of earnings, as a result of the termination of his employment in June of 2013.

Q And when you calculate economic losses of this type, what sorts of information do you generally rely upon?

A Ideally, a good income history of the individual whose earnings I'm trying to estimate and project. So, documents that would provide that information, W2s, year-end pay statements. A history of pay rate increases. Other information about the other kinds of compensation someone might have on their job, like fringe benefits or bonuses. So all of that information, to the extent I can rely on an individual's own experience and perhaps on the company's experience since the point of termination provides a good guideline for me.

Q And did you review that sort of information with respect to Mr. Wadler in particular?

A I did.

Q Did you write a report in this matter, summarizing your conclusions?

A I did.

Q And as part of that report, did you include a spreadsheet which summarized the dollar values associated with your projections?

A Yes. The way I present my opinions ultimately is -- is usually in a spreadsheet, where I detail all of those categories of compensation in whatever the relevant time period might be. And I did do that in this matter.

Q So if you could look at the document which is in your binder there, I believe in the side pouch, Exhibit 205.

A It's not, although I do have a copy of it.

Q I believe I have a copy here, if that will be helpful.

A Okay.

Q Is this Exhibit 205 the spreadsheet that we were just referring to?

A Yes, it is.

Q And does it accurately summarize the analysis that you did concerning Mr. Wadler's damages from compensation-related loss?

A Yes.

Q And would use of this chart aid you in presentation of your conclusions to the jury in this case?

A I believe it would.

MR. CLUNE: Your Honor, I would like to display Exhibit 205 to the jury as a demonstrative.

THE COURT: Any objection?

MR. POTTER: No objection.

THE COURT: Okay, go ahead.

(Document displayed)

MR. CLUNE: Ms. Guzman, I don't know if there is a way to blow up the middle chart --

(Document displayed)

BY MR. CLUNE

Q All right. What I would like to do is just walk through this chart briefly with you. If you could just explain to me what the -- the left side of the chart, the earnings without termination describes.

A So generally what I did was first I looked at and determined what I believed Mr. Wadler would have earned, had he not been terminated and continued to be employed. And then I subtracted from that what he did earn, which is the right side of the chart.

So the left side is broken down into three of the four components of his compensation, which are his wages, the bonuses that were earned, and the value of his fringe benefits.

Q And before we go into the specific topics listed here, I just want to clarify for the jury, did you analyze at all Mr. Wadler's stock-related compensation? So for example, stock options that he received?

A So I mentioned there were four components. I analyzed three of them. I did not analyze the stock options and that portion of his compensation. That was done separately.

Q And why did you not do that?

A Because I wasn't best qualified to do it.

Q Now, with regard to Mr. Wadler's wages, towards the left-hand side, please tell us how you calculated Mr. Wadler's lost wages.

A So I started with his rate of pay at the time of his termination. His salary was $407,368 a year. I knew that, that was documented in the material that I saw.

I also knew that in the years prior to his termination, he had received wage rate increases, I believe, four years -- four different years on March 1st. Often they didn't actually occur on March 1st; they were paid to him retroactively. Often a decision that appeared to be dated at the end of the years, but retroactive to March 1st.

So what I did is I looked at a period of time, actually the last five increases that he had had, which ran from the increases in 2007 through 2012. They averaged 2 percent a year. And I made the assumption that had he continued to be employed, that from 2013 through 2016, he would have received increases of 2 percent on March 1st, even though in June he hadn't yet received it, but it would have been retroactive as in the previous years.

So those were essentially the only assumptions I made about wages, what he was earning. And I used his own relatively recent history as a basis for what he might have earned on the dates that it appeared the increases occurred.

Q And how did you calculate his lost bonuses?

A So what I understood about bonuses was that the company in most years paid incentive bonuses. It was based on the performance of the company, not the individual employee. That it was generally paid in the first quarter of the year, and was determined as a percentage of the individual's earnings in the year before.

So, for example, Mr. Wadler received a bonus in 2013 that was for 2012. So, again, I looked at -- so I took into account his actual bonus in 2013. Again -- but for purposes of 2014, '15 and '16, I had additional information. I had additional information from the company, documented in their public documents, which showed the range of bonuses that they paid to their executives. And Mr. Wadler had, during some period of that time, been considered one of those executives.

And I compared what -- the years I had of that information with his actual bonuses so I could see how his bonus compared in the years that overlapped. I think there were four years. And then I used that same ratio for 2014, 2015, 2016 bonuses which were reported by the company, in order to estimate what he would have earned. It ranged from about 16 percent of his previous year pay in one year to actually the maximum that he could receive, which was double his target or 80 percent in the latter two of those years. So that's how I calculated those years, because I had some more information from the company.

And then going forward until his ultimate retirement, I used that information plus the short history that I had relied upon, and I averaged it all. It averaged about 45 percent of his previous year's pay. And I used that to project what he would have earned in those later years in his retirement. The years that are coming in the future.

Q How did you determine Mr. Wadler's fringe benefits?

A So I took two fringe benefits into account. One was that the company was paying for his medical insurance. And in 2012 on his W2, the last full year of his employment, thanks to the Affordable Care Act that figure actually has to be documented, so the cost was right there. I increased it by 4 percent a year to get up to 2016 as a guideline I used for how that insurance cost would increase.

The other component is a profit-sharing payment. And this is very well documented in the company's information. Both what Mr. Wadler earned as long as he was an employee, and how much has been paid to executives in the subsequent years up until now. It's gone up each year at just $250 a year. It's around $13,000. I assumed Mr. Wadler would have received the amounts that were paid out to other executives, just as he had previously. And then going forward, I just left it at what the current rate is.

Q And how did you determine how far forward into time to project Mr. Wadler's damages?

A Well, that's always a good question, because individuals are different about how long they want to work. And, and I don't personally have an opinion about that. I understand Mr. Wadler has offered his, that he did not have any particular plans to retire.

So what I relied upon, which many economists do, is a study that's published by other -- we're called forensic economists -- relying on government data, which suggests how many years an individual, based on their gender, their age and their level of education might expect to be in the labor force until they ultimately want to leave and no longer have an interest in returning. It takes into account the probability of death and it takes into account patterns of employment by like individuals in the labor forces documented by government data.

So I used that data for Mr. Wadler. I used his age at the time I wrote the report because my understanding was he intended to have been employed at that point in time. He wouldn't have retired up until then.

And that suggested, when I first wrote the report in June, it suggested that there were six more years of his statistical work life. I later updated the report, the one that's there, which is September. And so what shows on the future there is actually five and three-quarters years. It takes him to about age 75 and a half. And based on this data, that's his statistical work life.

Q And why did you not project forward from the date that he was terminated from Bio-Rad?

A I don't do that in cases that involve employment termination because of the fact that the probability of death is part of the figures that are included in the statistical work life data. And Mr. Wadler is apparently very much alive. And I thought it was inappropriate to use an age that he's long since passed.

Q In terms of the payments that occurred -- that you calculated Mr. Wadler would receive in the future, did you do anything to determine what those would be worth today?

A Well, there's a couple of things I did. If you look at the chart, itself, you will see it's broken down into two time periods. Past and future. So the past stands -- so it runs in years, you can see, and the last year of the past is 2016. And you will see there's a 9 next to it. That is nine months. I wrote the report in September. So nine months had passed.

And then, the future starts October 1st, 2016. It runs out for those five and three-quarters years, so that gets us to mid-year 2022.

What you'll notice as well is that the figures in my earnings without termination, even though they changed in the past, they're all -- they all look the same in the future. And that's because just methodologically, I kept everything in current dollars. So the figures there are all shown as if he was earning it in 2016.

But later on in the report on the end in the far right where you see the term "Present Value," that's where I take into account a couple of factors I'm obligated to because I'm doing this in a legal setting, that includes both the fact that yes, I do expect his earnings would have gone up during this time period, but also because I'm obliged to offer an opinion not in current dollars or even future dollars, but in what's called present value.

Q And in doing those present value calculations, do you use a net discount rate or some other kind of discount rate?

A So I mentioned that I take into account the fact that I expect his earnings would grow. What present value is, and why I'm using that, is because when economists are asked to calculate a loss that is going to be incurred in the future, so in this case Mr. Wadler's future loss, it hasn't been incurred yet, but I'm estimating he's going to have losses in the future, I need to calculate it in today's dollars. In dollars that he could be potentially awarded, and which he could take and invest. And in a court of law, that guideline is a safe, risk-free investment.

And then through a combination of the principal that he invests that perhaps is awarded to him and the interest that he earns on it, he can withdraw in each year of his loss the amount of the loss as I have calculated it. And that takes two factors into account. One is that those losses are going to grow because he would probably continue to have wage rate increases, the cost of his medical insurance would go up, maybe the profit-sharing would continue to go up. So all of these factors would tend to raise the amount of his loss.

But the other thing is that he can invest it. And as I indicated, in a courtroom setting like this, our guideline is that it's a safe, risk-free investment. So, most economists like myself tend to look at the returns on U.S. Treasury notes of various durations. I look at the rate on three-year treasury bonds.

And so, in answer to your question, what I do is I combine them together. And if you look historically, interest rates on U.S. Treasury bonds have increased about 1 percent faster than increases in workers' earnings, which is what I used as my guideline for Mr. Wadler.

So, I'm effectively saying if he earns a compound 1 percent interest rate for each of the years of the future, that he will earn a certain amount of money on that, and that means he needs less today to be compensated for his loss.

Q I just want to focus on the bottom of your report, that box (Indicating).

MR. CLUNE: Ms. Guzman, if you could blow that up.

(Document displayed)

BY MR. CLUNE

Q Did you tabulate a summary of what Mr. Wadler's losses would be, based on your analysis?

A I did.

Q And is that the summary in this box here?

A It is.

Q And what did you determine Mr. Wadler's past earnings loss would be as of the date you wrote this report?

A The figure that I came to is $2,162,035. And that takes into account the fact that he did receive earnings in 2013, they were included on the chart, that were not only the earnings for his time employed at Bio-Rad, but also payments that he received particularly for unused personal time off that were paid to him at his termination.

Q And what did you determine that his future earnings loss would be?

A In present value, $3,806,401 (sic).

Q And what does that result in for the total earnings loss?

A The total is $5,998,436.

Q And, you made this report in September, correct?

A I did.

Q If you were to run the report today, would there be a distinction, would any amount of the past earnings loss come up to -- well, actually, strike that. Let me rephrase. I apologize.

If you were to run the report as of the end of 2016, what would happen between the allocation of past earnings lost and future earnings lost?

A There would be three more months of the past which we lop into the figure for the past. The number that was on my chart is about 125,000. That's what he would have earned in those three months. And so, that would get added to the past. It would bring it up to a little under 2,300,000. And it would get subtracted from the future.

Q You also had the line for prejudgment interest. What is that?

A Yes. This is a category of loss which your office asked me to compute. It is a way to put a value on the fact he lost the use of the money in the past because he wasn't paid it and couldn't use it.

And I was asked to make a certain assumption about the appropriate interest rate to use in this setting, which I believe was 3.65 percent, simple interest. And that's what that calculation shows.

Q And what was Mr. Wadler's total economic loss, according to your calculations for everything, not including the stock-related compensation?

A It's the total earnings loss, the figure I've already described, plus the prejudgment interest. So the total is $6,104,309.

Q Thank you very much.

MR. CLUNE: No further questions.

THE COURT: Cross-examination, please.

MR. ASPERGER: Thank you, Your Honor.

MR. LANDES: May I approach?

THE COURT: Go ahead, please.

CROSS-EXAMINATION

BY MR. ASPERGER

Q Good morning, Dr. Ogus.

A Good morning.

Q Dr. Ogus, you were hired by the plaintiffs to give an opinion in this case. Correct?

A Yes, I was.

Q And is it true that you are being paid $425 an hour for your work?

A I am.

Q And in your first expert report that you prepared, you made a significant calculation error. Isn't that true?

A I made a mistake in the calculation of the past wage rate increases, yes.

Q All right. So you made some -- an incorrect assumption there, and a $200,000 error, correct?

A It did reduce the numbers by that, yes.

Q And is that an example, Dr. Ogus, as to how a data point on an assumption you make can significantly affect the ultimate calculation?

A Certainly the assumptions one makes has an impact on the numbers. It helps to get them right the first time.

Q And is it true that there are a lot of assumptions you have to make here to determine how long Mr. Wadler might work?

A I'm not sure specifically for how long he might work requires a lot of assumptions, but it does in this case require relying on the data source that I used.

Q So let's take a look at the exhibit that was up on the chart, Exhibit 205. If we could put that back up, please?

(Document displayed)

Q Now, Exhibit 205 is what you used to get to your roughly $6 million calculation -- or it reflects your conclusions of how you got to $6 million in lost wages. Correct?

A Yes.

Q And if you look at Exhibit 205, you assume that Mr. Wadler would work another nine and a half years. Correct?

A From date of termination.

Q Right. So that's 2014, '15, '16, all the way up to 2022. Correct?

A That's correct.

Q And did you do any factual investigation into the circumstances of his job to make that calculation?

A I didn't have any information about his job. I did see in some of the public filings that there were individuals employed among the executives who were -- were also of a certain age.

Q Did you -- did you look -- did you look at the number of job applications that Mr. Wadler submitted after he was terminated to try to find another job?

MR. CLUNE: Objection, beyond the scope.

THE COURT: You can answer that question. It's a yes-or-no question.

THE WITNESS: I did not.

BY MR. ASPERGER

Q So from the time of his termination until the time of his lawsuit, did you do any examination at all to see how many applications he had -- he had sent out to potential employers?

A I did not, nor do I consider myself qualified to provide an opinion about Mr. Wadler's ability to become reemployed.

Q Do you think his -- the number of applications he puts out is relevant to what his income would be over these next nine and a half years or --

MR. CLUNE: Objection, beyond the scope.

THE COURT: Sustained.

BY MR. ASPERGER

Q Let's go to your assumptions, then, Dr. Ogus. You refer to a report or an article that you used to make assumptions as to how long he would work. Correct?

A Yes.

Q And that is the -- is that a life table?

A Work life tables.

Q Work life table? And in this case was it a work life table from an article, an academic article by Gary Skoog, James Ciecka, and Kurt Krueger?

A Yes.

Q And you relied on that to determine the assumptions, or you relied on their subject assumptions to determine what would be the length of time he would be likely to work. Correct?

A I did.

MR. ASPERGER: Could we put up Page 190, please.

BY MR. ASPERGER

Q That should be Table 11.

THE COURT: Wait, are you, what are you --

MR. ASPERGER: Well, let's lay the foundation.

THE COURT: Yes.

BY MR. ASPERGER

Q Look at Page 190 of the document that is in front of you. Is that your expert report? What we put in the binder with the tab?

THE COURT: What tab?

THE WITNESS: 190 --

MR. ASPERGER: There should be a blue flag, Your Honor, which is Table 190 in your binder.

THE COURT: So you're looking at Exhibit 208.

MR. ASPERGER: No, Your Honor. This would be her expert report.

THE COURT: It's not marked as an exhibit.

MR. ASPERGER: We gave a binder -- it's a demonstrative, Your Honor. I'm not going to introduce it into evidence.

THE COURT: So, it's actually not.

So you have in front of you the Skoog, et al. article.

THE WITNESS: I do.

THE COURT: Okay.

BY MR. ASPERGER

Q And is this an article that you recall relied on in reaching your conclusions?

A I did.

Q And this is a table that is for males with graduate degrees who are currently employed, correct?

A Yes.

Q And if you look at Page 190, that's the table you relied on in assuming that he would work nine and a half more years. Correct?

A The table that's on Page 190, that's correct.

Q Okay. And does it have different ways of describing the time someone might work in the work force?

A It does.

Q And it has columns that are titled "Mode" and "Mean" and "Median"? Correct?

A Yes.

MR. CLUNE: Your Honor, we object under Federal Rule of Evidence 80318.

THE COURT: Overruled. You can put that up.

(Document displayed)

MR. ASPERGER: Can we go to --

(Document displayed)

BY MR. ASPERGER

Q So if you look at this Table 11 which is what you relied upon, it has a column for age, correct?

A Yes.

Q And then it has columns for mean, and median, and mode. Correct?

A Yes.

Q So let's start with the column for mode. Does the column for mode reflect the most common number of years before someone would leave the work force?

A It's the number that's most frequently stated in a set of data. So in that respect, yes.

Q Okay. And there is a column for median as well, correct?

A There is.

Q And a median is the halfway point of how long people work. Correct?

A Within these category -- these demographic categories, yes.

Q So, for the median, half of the people work less than the number listed in the column, and half of the people work longer. Correct?

A It's the mid point, if you take all of the numbers and put them in a column.

Q Okay. And then there's a column for mean. Is that also correct?

A Yes.

Q And the mean is the average. Correct?
A It is.
Q And is the average typically higher because it's skewed a little bit for people who work longer than others?
A Oh, actually, if you look at this data, I would say it's generally a little lower. It's higher in some years and lower in others. I didn't compare it over the course of the whole table. It is true that in the years that I looked at, it was a little bit higher.
Q So, for someone aged 66 and a half, it is higher than the mode and the median. Correct?
A Yes.
Q So let's look first at the mode column. And for a person that is age 66 and a half. So the mode column suggests that a person -- or concludes, actually, assumes that a person who is 66 and a half will work an additional three and a half years. Correct?
A That's correct.
Q And, a person who is 67 would work an additional three and a half years. Correct?
A Yes.
Q And so with Mr. Wadler being 66 and a half years old at the time of his termination, that would mean that he would work until age 70, if you do the math. Correct?
A Yes.

Q And then if you look at the median column, for a person the age, age 66 --

THE CLERK: One of our jurors can't see.

MR. ASPERGER: I'm sorry.

BY MR. ASPERGER

Q So if you look at the median column, as of the date of Mr. Wadler's termination, when he was 66 and a half, he would work an additional six and a half years. Correct?

A That's correct.

Q And so that would put him, if you do the math, to age 73. Correct?

A Yes.

Q And then if you look at the mean column, which is the column you relied on, that has the highest number. Correct?

A For that age, it does, yes.

Q And that shows that he would work roughly seven more years if you take the mid-point between 7.2 and 6.8. Correct?

A Yes.

Q So that would put him at 73 and a half, correct?

A Yes.

Q Not 75 and a half?

A Well, I didn't use 66 and 67 as my guideline. That is why my numbers were different.

Q You didn't, right. So your numbers were different. This is the date of his termination. And if you calculate the likelihood of how far forward he works from the date of his termination, your tables and the assumptions they make give the numbers that I just went over with you. Correct?

A That's correct.

THE CLERK: Mr. Asperger, can you move your microphone back?

MR. ASPERGER: Sure.

BY MR. ASPERGER

Q So I would just like to do a little bit more math with you. Were you aware that Mr. Wadler's salary when he was terminated was about 6 -- salary and bonus was about $650,000?

A I'm not sure how you got to that number. I know his salary was 407,000. And I guess it depends if you are talking specifically about the bonus in 2013. I'm not sure how you got that number.

Q So, what bonus would you assume in 2013, Dr. Ogus?

A He received his bonus in 2013 which was 150,000.

Q So, 407,000 plus 150,000, which would be roughly 550,000. Correct?

A 550, 560, yes.

Q Okay. So just, if you -- if you do the math and project that forward three and a half years, the number would be somewhere in about 200 -- 2,200,000 or thereabouts, correct?

A You're a little faster than me. I can -- I like to rely on my calculator. But that again makes certain assumptions. It sounds like it's assumptions that his wage rate wouldn't change, that the bonus wouldn't change. And we do know there had been a history and bonus payments that suggested they did change from year to year.

Q Okay. So for purposes of simplicity, let's round the number up to roughly -- let's assume he would have gotten the full bonus for 2013. And let's use the number of $650,000. Is that okay?

A I'm not sure what full bonus he would have gotten and how you -- I'm sorry, not sure how you get -- I'm happy to use your assumption of 650. I'm not sure how you got there.

Q Let's pick a round number of $650,000.

A Of compensation in a year.

Q Total compensation.

A Okay.

Q Which would be the salary and the bonus.

A Okay.

Q And if we picked that whole round number of $650,000 and he works three and a half more years, what is the total amount of damages?

A 2,275,000.

Q And in your tables, on average, could you tell me what you would project he would make going forward?

A Going forward from date of termination?

Q From date of termination.

A Well, I have included fringe benefits in the number, which is roughly 20,000 a year. But my figure for 2013 was -- without that, was about 566,000.

(Document displayed)

A In 2014 the bonus was considerable lower. So the figure is about 493,000. The bonus was higher according to the filings that I saw in '15 and '16. So in '15 my figure is more like 770,000. In 2016, I need to combine the two parts of the year together.

Q Let me stop for a minute. 2014 your number is 513,000, correct?

A With fringe benefits, yes.

Q And 2016, it's about 682,000, is that correct?

A That's the first nine months of the year, to which you would need to add the other 125,000 that's shown in the future. So it would be a combination of those.

Q I'm sorry; is it -- for 2016, is it -- what's your total number for 2016?

A It's the 682,000 that's through September, including the bonus. And another 125,000, so it's actually about 800,000 in that year.

Q And then for 2017 it looks like it's about, what?

A Going forward, it's 680,000 a year. That's including the fringe benefits.

Q So you've got 680 for 2017, 2018, 2019 and 2020. Correct?

A I do.

Q So let's use 680,000 then as an average. And based on the tables, the projection of his continued employment is three and a half years. What would be the total in damages?
A Three and a half years into the future is what you have asked me to assume.
Q Three and a half years from the date of his termination?
A Well, three and a half years from the date of his termination doesn't take us very far in the future. So --
Q I would like you to do that calculation, please.
A Okay. So we're using 680,000 a year as a guideline for three and a half years, is that what you are asking me?
Q Right. And you are choosing the median number from the time of his -- that he left Bio-Rad, which is three and a half years. Correct?
A Well, you are choosing that. So you are using the date of termination and the median number. Is that --
Q I'm making different assumptions than you.
A I understand.
Q I'm trying to use the life table assumption and use the -- use the mode, which is the most common number or number that results most frequently in how long people work. And I would like you to be able to calculate that for the jury please.
A Okay.
(Witness performs calculation)
A That is all in the past, so it is just multiplied, it is two

million -- 2,380,000.

Q So if he worked -- if, based on the life tables, the assumption that you make is that he is going to work three and a half more years, then based upon your calculation, the damages would be, 2,380,000. Correct?

A Yes.

Q Now, did you rely exclusively on these life tables to assume how far in the future Mr. Wadler would be likely to work?

A Work life. Yes.

Q Did you perform any independent analysis to corroborate or support your assumptions?

A I don't know what kind of independent analysis I could have done. It all comes down to when Mr. Wadler would have retired. And work life provides a guideline for that. There's no other real guideline except the individual.

Q Well, the work life makes a number of assumptions. Correct?

A It does.

Q Work life table? And if you change the assumptions, that will change the number, won't it?

A If I use a different one of the numbers, it changes, yes.

Q Or if you use different assumptions, you might come up with a completely different table. Right?

A I guess I'm not sure what different kinds of assumptions you are referring to.

Q Well, in other words, your projection as to how long

Mr. Wadler would work depends entirely upon the assumptions you might make, whether it is a work life table or something else, right?

A Well, if I'm going to use the work life table I'm pretty much tied into the assumptions that I would make. It's gender, age, and level of education. I do make a decision about which number is reported that I would use. That's about the only decision I can make. The other decision I can make is whether I use date of termination or I use date of report. And I explained why I used the date of report.

Beyond that, there really isn't any data that is going to tell me in any statistical or other way how long Mr. Wadler might have expected to work at the point of his termination beyond his own testimony.

Q So you are using whatever assumptions the work life table uses to statistically make a projection as to how long you would think he would work, correct?

A Yes.

Q And that is based on the work life assumptions, not independent work you did, correct?

A Again, I don't know what other independent work I could have done. But, yes.

Q And do you know how these work life tables are generated, statistically?

A I'm not enough of an econometrician to be able to check the math, but it's a peer-reviewed article that I know is used by many in my field, and is respected.

Q Do you know how this -- how the table is generated statistically, Dr. Ogus?

A No. I don't know the details.

MR. ASPERGER: Could we play from her deposition, Your Honor, 140, Lines 7 to 140:11?

THE COURT: Any objection?

MR. CLUNE: No objection.

THE COURT: Go ahead.

(Portion of video played, not reported)

BY MR. ASPERGER

Q So, Dr. Ogus, are the estimates of how long somebody might work, for a table like this, based on -- broken down by gender, age, education and employment status?

A Yes, they are.

Q And would you agree that people of the same age and gender and employment status may work for different periods of time?

A They may. And that's reflected in the range that's offered in those statistics.

Q And would you also agree that a number of factors might affect how long somebody continues to work at any given job?

A Yes. Which is why looking at patterns of employment in the labor force is part of what the study does.

Q Would you also agree that an assessment of Mr. Wadler's work performance at Bio-Rad could affect how long he would continue to work there?

A I have no opinion about that. I am assuming that he would have had the opportunity to continue to be employed. And I have no information about Bio-Rad in particular.

Q So, you have no information about his work performance at Bio-Rad. Is that what you are saying?

A That's correct.

Q But would you also agree that an assessment of his work performance at Bio-Rad could have a significant impact on how long he continued to work there?

A His ability to be employed at Bio-Rad is certainly a factor. Beyond that, I don't have any information.

Q Well, his ability to work at Bio-Rad and his performance would be an important factor, wouldn't it?

A I don't know what factors would be important. Presumably his performance would be. Yes.

Q Did you know that two of Bio-Rad's board members, Mr. Drapeau and Mr. Hillman, had recommended in April of 2010 that Mr. Wadler be fired for poor performance?

MR. CLUNE: Objection, Your Honor, beyond the scope.

THE COURT: Sustained.

BY MR. ASPERGER

Q Do you have any idea of the recommendations of the Board of Directors over time as to what Mr. Wadler's employment status should be?

THE COURT: It's beyond the scope. You can't go into that subject. You have already gotten the answer that she didn't examine that subject at all.

Move on, please.

MR. ASPERGER: Okay.

BY MR. ASPERGER

Q So the bottom line then, Dr. Ogus, is you don't have any information about his performance at Bio-Rad, and you would agree that that could be a significant factor in impacting how long he continued the work there. Correct?

MR. CLUNE: Objection, asked and answered.

THE COURT: Sustained.

MR. ASPERGER: No further questions, Your Honor.

THE COURT: Any redirect?

MR. CLUNE: Yes, Your Honor. Just a bit.

REDIRECT EXAMINATION

BY MR. CLUNE

Q Dr. Ogus, opposing counsel just brought up the mean, median and mode from those statistical work life tables. Do you remember that?

A Yes, he did.

Q And you have been an expert in how many cases?

A Thousands.

Q And how often have you used these statistical work life tables?

A Probably in the majority of the cases that I work on, because it offers an independent guideline, not specific to an individual, about how long like individuals work.

Q And do you only use these tables with plaintiffs when you are advising them? Or do you also use them with defendants?

A No. I use them in all the work that I do.

Q And statistics, can they guarantee whether or not Mr. Wadler will live to the age that you suggest he will work until?

A No. Of course not.

Q And so why do you use these statistics if they can't guarantee that?

A What I'm trying to do in this case, and all the cases I work on, is to come up with an independent measure of how long an individual might statistically remain in the labor force, based on individuals who have like characteristics.

I don't know Mr. Wadler's specific intent. I don't know his medical record. I am assuming that he is characteristic of a man of his age, and level of education, employed in the labor force. And statistically that suggests a certain period of time that people like that stay in the labor force before they ultimately leave it.

Q And you heard counsel suggest that Mr. Wadler could work less time. Correct?

A Yes.

Q Is it possible that he could have worked more time than what your statistics project?

MR. ASPERGER: Objection, speculative.

THE COURT: Overruled.

BY MR. CLUNE

Q And how do you know that?

A Well, I know for example, if you look at the percentiles that are right on the same table, there is a range at least within the numbers that I looked at, that ranges anywhere from one year to eleven years of continued employment.

So, yes, some people are going to stop working sooner than that statistical work life mean that I used. And some are going to work longer.

Q And you didn't use the mode as he -- opposing counsel went to before, correct?

A I didn't.

Q And why didn't you use that mode?

A It seems to me -- and this is a decision I didn't make for this case, it's a decision that I made long ago in using this data, and the data has existed in various forms for a long time. Because we're talking about an individual about which I'm not making any assumptions about how long he would work, I think it's appropriate to use the whole range of data, the data that might be outliers on one side or another, shorter or longer. Just what the data shows about -- about the mean, the average duration in the labor force. And that's what I relied on.

Q And are you aware of any other forensic economists using that mode figure for purposes of projections?

A You know, there is a study that's done in my professional organization about every two years that asks a lot of questions about what our fellow economists use. And the majority of them say they do use work life data.

The question has never been asked: Do you use median or mean or mode? So, I can't give you an answer to that part of it.

Q And you have never used mode in your previous engagements, correct?

A I haven't.

MR. CLUNE: No further questions.

MR. ASPERGER: No further questions, Your Honor.

THE COURT: Thank you very much. You may step down.

THE WITNESS: Thank you.

(Witness excused)

MR. WAGSTAFFE: Would that be -- for my purposes, can I ask if this is an appropriate time to take a break?

THE COURT: It is an excellent time.

MR. WAGSTAFFE: Thank you, Your Honor.

THE COURT: Yeah. You are welcome. So we will take a 15-minute break, please.

(Jury excused)

THE COURT: Thank you, see you in a bit.

(Recess taken from 10:00 a.m. to 10:27 a.m.)

THE COURT: All right. Welcome back.

Call your next witness.

MR. CLUNE: Plaintiff calls Mr. Wei Chiu.

WEI CHIU

called as a witness for the Plaintiff herein, having been duly sworn, testified as follows:

THE CLERK: Please have a seat.

State your full name for the record and spell your last name.

THE WITNESS: Wei Chiu. Last name is C-H-I-U.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. CLUNE

Q. Good morning, Mr. Chiu.

A. Good morning.

Q. What is your current occupation?

A. I have a small management consulting firm and I do expert witness analysis and testimony.

Q. And do you have any educational degrees?

A. I do.

Q. And what degrees are those?

A. I have a Bachelor's in physical sciences from Harvard. I have a Master's in architecture from MIT. And I have an MBA in finance from Stanford.

Q. What is the name of the economic consulting firm that you mentioned?

A. Newell Advisors.

Q. And what do you do at Newell Advisors?

A. Initially we did a great deal of corporate and commercial consulting on real estate matters. And more recently a lot of our work is on economic analysis of damages and loss.

Q. What other employment have you had that relates to finance?

A. It goes back over 35 years. Once I got out of graduate school, I started a finance subsidiary in Houston, Texas with one of my classmates. We worked on the real estate communication business. We had securities licenses. We basically promulgated about 13 different limited partnerships across the country and had ultimately 4,000 investors nationally.

I then went on to do a number of consulting things. Started a company called Penobscot Group with, again, another friend of mine from undergraduate. And we did analyses of the real estate industry as it was transferring from separate limited partnerships into securitization. This was just after the Regan Administration when the tax laws changed. So that the securitization business was causing all of these limited partnerships to become stock owned or publicly offered real estate investment trusts.

And we ended up authoring one of the national due diligence reports for many of the large investment funds, like Fidelity, Cohen and Steers, a dozen of them.

Q. Have you ever had to value stock related forms of compensation, such as restricted stock or stock options?

A. I know what they are. I've done it collaterally in my work. I've only done one or two cases as an expert witness directly involving RSUs and stock options.

Q. And how much of your overall career has been in finance, related to financial predictions?

A. Finance has been the driver of my entire career. And it's been the core. I would say that it's the core theme through my entire career. Although my career has been in different industries.

MR. CLUNE: Your Honor, pursuant to Rule 703 we would like to tender Mr. Chiu as a qualified witness in the area of stock related compensation.

THE COURT: You can ask him opinion questions.

BY MR. CLUNE

Q. Were you retained in this matter by my firm?

A. We were.

Q. And what were you asked to do?

A. We were asked to look at the economic loss and damages for Mr. Wadler from his -- resulting from his termination from Bio-Rad.

Q. So you were in the audience when Dr. Ogus was giving her testimony, correct?
A. I was.
Q. And so are you providing different testimony than Dr. Ogus?
A. I'm doing the segment of -- I think it was part four, the part of the analysis that she said she didn't do. And it's related to the -- precisely the stock related damages, the loss of the stock options and units.
Q. Did you review any materials to assist you in conducting your analysis?
A. I did.
Q. And what did you review?
A. Well, I looked at the stock documents that Mr. Wadler had for -- from his own files, which normally are not only letters from the company that say you have been awarded "X" number stock options on such-and-such a date and then -- and those weren't complete, but there were quite a few of them.

There were also account summaries from E*Trade, which, I believe, was the company that managed the stock program for Bio-Rad and, therefore, kept a kind of running summary of the awards, what had vested, what had not vested, et cetera. And, again, it wasn't complete, but it was there.

And then for the holes that we had, we went to the SEC documents, there are documents called DEF-14As. They are proxy statements basically. But we went into the proxy statements to

look for the information we didn't have.
Q. What forms of stock related compensation did Mr. Wadler receive at Bio-Rad?
A. There were fundamentally two kinds. Initially he only received stock options, either qualified or non-qualified, but basically stock options. It's an option to buy one share of stock.
Later in his career -- again, roughly after the dot com bust, when there were some tax problems with people who had those options -- the Securities and Exchange authored something called an RSU, which is a restricted stock unit. And that differs from an option in that it is actually a grant of a stock. So on the day it's awarded, you get the stock, but it's got restrictions on it. You can't sell it. You can't own it. You can't take it to the bank. Not until that restriction period comes off. So you own the stock, but it's restricted. With the options, you only have the option to buy a stock.
Q. So with respect to the restricted stock that you were talking about, how much is a share of restricted stock worth on the day the restrictions end?
A. It's worth whatever the stock price is on that day.
Q. Okay. And what happens under Bio-Rad's plan if an employee is terminated before the restriction ends?
A. It goes away.
Q. Now, with respect to the stock options, how do you value how

much a stock option is worth?
A. That's more complicated, but let's just use some easy numbers.
So assume for a minute that I'm given one stock option for 10 -- with a, what is called a strike price of $10. That's the price at which the option was given to me. I hold it now for two, three, five years. And I want to sell it -- or it vests, because I have to wait through a period until the option becomes mine. And at the point it vests, then I can sell it.
At that point the stock is now worth a hundred dollars on the market. I have to pay the difference. I have to buy that stock for $10. Then I earn the difference between the market price and what I would pay for it. So I would earn, gain $90.
Q. And are there any restrictions on the stock options that employees at Bio-Rad receive?
A. There are some tax implications of the different kinds, but from what I understand, the restrictions were related to the vesting periods, which is common to all options.
Q. And when you say "vesting period," what do you mean?
A. I'm awarded -- in an initial later, as I mentioned, that Mr. Wadler might have received from the company, the letter would say something like this: You have been awarded 2,000 shares and the 2,000 shares are going to basically be distributed to you 25 percent a year for over the next four years. So he would receive 500 shares each year for the next

four years.

So until those shares go through a vesting period, he doesn't own them. He gets them. They don't vest yet. And when they finally vest, he can own them and do what he wants with them.

Q. And if he is terminated or if any employee is terminated before the stock options vest, how much are they worth?

A. Zero. He doesn't control them and he doesn't own them.

Q. How many stock -- well, strike that.

How many shares of restricted stock did Mr. Wadler receive in his last year of employment in 2012? His last full year, if I might add.

A. I need to refer to my notes, if I might.

Q. That's fine.

(Brief pause.)

A. Was the question restricted stock?

Q. Right. Restricted stock.

A. I show that he received none.

Q. Well, how many shares of restricted stock, not during 2013, but in the year -- the last year, full year of his employment with Bio-Rad?

A. Oh, I see. Okay.

(Brief pause.)

A. The last full year of his employment would be basically 2012, and he had 600 -- 600 stock options and 5800 -- I'm sorry.

Let me go back again.

He had 200 stock options -- 200 RSUs and 600 shares of options that he should have vested, but he did not.

Q. So getting away from what vested and what didn't vest. So do you know how many shares of restricted stock he received and how many shares of stock options he received in terms of just numbers of shares?

A. He was typically getting 1,000 shares of RSUs and 3,000 shares of options.

Q. And when you say "typically," what did he receive the year before his last year?

A. The same. From 2007 to 2012 he was pretty routinely getting 1,000 shares of RSUs and 3,000 shares of options.

Q. And you said "pretty routinely." But was there any year in which he received anything else than 1,000 shares of restricted stock, or RSUs, and 3,000 shares of stock options?

A. Not in that period.

Q. And did you make any assumptions from that task about how much Mr. Wadler was likely to receive in the future in terms of number of shares of those two buckets of stock?

A. No. We used that same ratio of restricted stock units and options going forward in our analysis.

Q. And why did you do that?

A. Well, it seemed like a reasonable -- number one, it seemed like a reasonable expectation that he had been giving them --

getting them for a consistent period of time prior to his termination and that it was likely that he would continue to get them.

We also doublechecked against some of the other executives at Bio-Rad through those securities documents and a comparable executive of proximate level and that was about the same number of shares that she was getting at the time. And later on in 2014, 2015 they increased dramatically.

Q. Now, in conducting your analysis going forward, how far forward did you project Mr. Wadler's lost stock related compensation damages?

A. I used what Dr. Ogus gave me, which is basically a work life period. So I believe it was until Mr. Wadler would have been 75 years old. So roughly 23.

Q. Did you do your own independent statistical review or was that something you're relying on for Dr. Ogus?

A. I'm relying on it from Dr. Ogus.

Q. Did your analysis of the value of these shares of restricted stock and stock options that Mr. Wadler would receive in the future require you to make any predictions regarding Bio-Rad's stock price?

A. Well, yes. Predictions in terms of where the -- I believe that the stock was growing to or going, so, yes.

Q. And why did you need to do that?

A. Because especially in the case of stock options, as we discussed, the option is worth whatever the price is on the day that it's exercised and then there is that difference. And the RSUs are worth what they -- the price of the stock the day that they were given to him.

So the issue for us was to look at historically the stock performance of Bio-Rad and then to projection forward what we believe was the most reasonable and conservative projection of the likelihood of the stock price going forward.

Q. And you calculated damages between when Mr. Wadler was terminated and today, correct?

A. Yes. But we based it on a data analysis going back to the date he was hired in 1988. Because when you do this kind of data analysis, stock goes up. Stock goes down. It gets pretty -- can be pretty hectic. And what you want to try to do is smooth out those bumps and create the longest period of time so that you have stability.

Now, that line may shift a little bit, but the longer the period of time you can do this analysis on, the more reliable it is. And we did it over the 28-and-a-half year period that Mr. Wadler was employed at Bio-Rad.

Q. And how did you conduct your analysis of what the stock price was likely to be based on that?

A. Okay. So I'm fundamentally the messenger in this. I did pull out what is basically called a compound annual growth rate. But the compound annual growth rate is generated literally by the company. I did nothing to try to manipulate statistics or anything else. I just looked at historical data from the company.

So the way the company is managed, the kind of products it's selling, its expansion into what markets, its manufacturing capabilities, all the legal and other hurdles that it basically overcomes or gets penalized by, all of those factors affect the growth of the stock. And outside of the stock are dozens and dozens and dozens of analysts who are looking at all of that data and saying, "We think the stock is worth $50." "No, I think it's worth $170." And somebody buys that stock that day. A willing buyer and a willing seller. And that's what sets the stock price.

So I took that stock price data, which is reflected in a proxy of the way the business is growing and running and I compounded -- I calculated a percentage, which is a compound annual growth rate. And it's used in the pure sciences. It's used in the biological sciences. It's used in finance. It's used in business. It's used wherever anybody wants to take a whole set of events and try to normalize and see what those events are telling them.

And I'll use the shorthand. The CAGR, the compound annual growth rate, in this particular case over those 28-and-a-half years was 11.8 percent. So every single year a sustainable, repeatable growth in that stock price was 11.8 percent from

1988 til the date Mr. Wadler was terminated.

Q. And so did you calculate Mr. Wadler's lost stock related compensation based on that compound annual growth rate of 11.82 percent?

A. Yes, I did.

Q. Other than doing that analysis, did you do any other alternate analysis to see how the stock might have fared?

A. I did.

Q. And what did you do?

A. I looked at a broad index for what the stock market did over a similar period of time. We couldn't get all the way back 28 years. I think we did 15 or 10 was the latest on the data we had. And we looked at an index for the *Standard & Poor's* 900, which is a combination of large and mid cap companies. And it covers probably 85 or 90 percent of the stock market. And that index was yielding about 7.5 percent over that period of time we looked at.

So we then took that and applied it to the future growth of the Bio-Rad stock and came up with new numbers for the annual increases to that stock.

Q. And after you had calculated how much Wadler -- Mister -- how much money, I apologize, Mr. Wadler would receive in the future, did you do anything to determine how much that would be worth today?

A. Yes. There are actually two parts of it. So the question you asked is about the future. And similar to what Dr. Ogus said, we looked at the future flow of revenue from -- to Mr. Wadler for the next five or six years, and discounted it back by the risk free rate. And in this case I think I used the risk free 10-year rate for Treasury bills, Treasury notes.

Q. And why did you use the risk free rate?

A. That's a great question. I knew nothing about Mr. Wadler, who he was, what he did -- well, I knew he was an attorney. But I knew that his age -- what his age was.

When I do a present value analysis or an analysis -- financial analysis like this, an economic loss is an opportunity cost. So what I have to try to figure out is if Mr. Wadler lost the opportunity to use this money, what would he have invested it in? What's the most logical thing that he would have invested it in?

And a 65-year-old, 67-year-old person doesn't go off and start doing something really dramatic. And typically it's just harboring the money for the future, his retirement and other things. And a risk free rate is probably the best metaphor or index of that kind of attitude. It's a very conservative way of investing and a conservative way of looking at the options.

Q. Did you create a report memorializing your analysis in this case?

A. I did.

Q. And I'd like to show you a graphic. If you could turn in that -- I believe it's in that binder to what's marked as Chiu Demonstrative 1. It might be towards the end.

(Witness complied.)

A. Okay.

Q. Does this graphic accurately summarize the findings that were in your expert report?

A. Yes.

Q. And would this demonstrative help you explain your testimony to the jury?

A. Yes.

MR. CLUNE: Your Honor, I'd like to show this exhibit -- or this demonstrative to the jury as a demonstrative.

THE COURT: Any objection?

MR. LANDES: No objection.

THE COURT: Go ahead.

BY MR. CLUNE

Q. If you could walk us through this, Mr. Chiu. What does the left-hand column represent where it says "S&P 900"?

A. So the S&P 900 is the analysis we did with a going forward growth rate on the Bio-Rad stock at 7.52 percent.

Q. And what does the right column represent?

A. The right column represents the compound annual growth rate that I discussed, which I calculated at 11.82 percent.

Q. And for past loss, what did you determine the past loss would be with regard to your S&P 900 analysis?

A. Well, it's basically the same for both sides, and it basically is -- there are two components to Dr. Wadler's loss. He was terminated in 2013, but I had to come up with the loss as of the date of my report, which was in June of 2016.

So the monies he would have received from 2013, '14, '15 and '16 were monies that he lost the use of. Then I had to calculate an interest rate for those past losses and bring it forward to 2016. And that's the $673,738 that you see in both columns.

Q. And do those numbers incorporate any analysis of what Bio-Rad's stock price was during that time?

A. Yes. We used the stock prices that existed in 2013, '14, '15 and '16.

Q. So that past loss row, does that include any projection by you of future stock price?

A. No.

Q. Now, with regard to future loss, what did you conclude Mr. Wadler's future loss would be if the stock grew at the S&P 900 rate of 7.52 percent?

A. The future loss under the S&P 900 scenario would be 1,479,992.

Q. And what would that make his total loss for the S&P 900 scenario?

A. 2,153,730.

Q. And what did you determine his future loss would be under

the compound annual growth rate formula?
A. 1,837,544 for the future loss.
Q. And what would that make his total loss be?
A. 2,511,282.
Q. So, roughly, what was the range of possible losses that you predicted Mr. Wadler would have incurred due to the fact of his termination at Bio-Rad related to his stock related compensation?
A. Depending on the growth rate that you use for the future stock, it's either -- it's between 2.5 and 2.1 million.
Q. Now, we've already discussed that your analysis required you to project the future price of Bio-Rad stock under those two different analyses, correct?
A. Correct.
Q. And you actually came up with specific numbers for what that might be in the future, correct?
A. Yes.
Q. I'd like you to look in your binder at what is marked as Chiu Demonstrative 2.
(Witness complied.)
Q. Does this graphic accurately summarize the prices that you projected Mr. Wadler -- sorry, Bio-Rad stock would be according to your two different analyses?
A. It does.
MR. CLUNE: Your Honor, I'd like to show this demonstrative

to the jury.

THE COURT: Any objection?

MR. LANDES: No objection, your Honor.

THE COURT: Go ahead.

BY MR. CLUNE

Q. So if you could just explain to me what the top blue line looks like -- or, sorry, what the top blue line represents on this graphic?

A. Sure. Note that the years are down on the bottom axis starting on the left-hand side with 2016. And it's important to note that both of these lines or curves are starting at the same point, which is when the stock at Bio-Rad was at $139.18.

From that point going forward, the top blue line that Mr. Clune is talking about is the stock prices that I calculated using the compound annual growth rate of 11.82 percent.

Q. And what does the bottom line represent?

A. And the bottom line would be the Bio-Rad future stock prices at the S&P 900 7.52 percent growth rate.

Q. And you mentioned you had done this report back in June of 2016, I believe?

A. Correct.

Q. And at that time as part of your analysis, were you required to predict what Bio-Rad stock price would be today?

A. No.

Q. As part of going forward, were you required to predict, in

general, what the stock price would be for future years?
A. Only based on my assumptions.
Q. Okay. And do you know what the stock price of Bio-Rad is today?
A. This morning it was 186.
Q. And where does that show up on the chart here?
A. It doesn't. It's way above my lines.
Q. So is it fair to say -- well, what does that say about your analysis?
A. It says that my analysis is pretty conservative, which I've always -- and one of the reasons why I like to use compound annual growth rates, because all of this volatility in the stock price is related to, you know, spontaneous reviews of the company and what they are doing and some person over here saying it's only worth $70 some person over here saying it's only worth -- it's worth 150.
You want to iron out all that. You want to look at consistent repeatable growth. And that 11.8 percent growth rate was consistent over 28-and-a-half years.
Q. And if you had done the analysis starting from today using that higher stock price, what it is now, would that give you a higher or lower ultimate damages for Mr. Wadler than what you actually calculated?
A. It would have been higher.
MR. CLUNE: No further questions, your Honor.

THE COURT: Cross examination, please.

CROSS EXAMINATION

BY MR. LANDES

Q. Good morning, Mr. Chiu.
A. Good morning.
Q. You were retained by the plaintiff in this case, is that right?
A. That is correct.
Q. Plaintiff is paying you $600 an hour for your testimony today, is that right?
A. That is correct.
Q. You've never authored any published papers regarding stock valuation, have you?
A. No.
Q. Okay. You've never published any papers regarding restricted stock units, correct?
A. Correct.
Q. You've never published any papers regarding employee stock options, correct?
A. Correct.
Q. In fact, you've never authored any published papers on any subject at all, correct?
A. That's not quite true. It's not a research paper in the way you may be using it, but we've written and published many, many documents when we were at Penobscot on the valuation or the

projected valuation on real estate companies about to go public. These were all pre-IPO, pre-initial public offering valuations.

And we did comprehensive reviews of their management, their portfolio, their marketplace, the stock valuation, the implicit cap rates of the stock, the beta risk, and then we compiled that all for the money managers who were investing in these new REED funds.

Q. The work you did at Penobscot, if I'm doing my math right, was about 20-some years ago, is that right?

A. It was in the mid-90's.

Q. Okay. And the work in the publications that you referenced, they didn't relate to employee stock options, did they?

A. Indirectly they did because they showed what the valuation of an IPO of REED stock would be, and those may be given to the employees.

Q. But it's true that at Penobscot Group your focus was on real estate, is that right?

A. That's correct, as an industry.

Q. Okay. And then your next job in your professional career was at, I believe it's Judwin Construction Company, is that right?

A. It was the Judwin Companies, that's right.

Q. Your work there also focused on real estate, is that correct?

A. It focused on finance and real estate.

Q. Finance and real estate, though, correct?
A. Yes.
Q. Your next job was at Touchstone Interests, is that right?
A. That's correct.
Q. That was a real estate company, is that right?
A. That is correct.
Q. Okay. Your next job was at Applied Materials, is that right?
A. Correct.
Q. That was also a real estate company?
A. Hardly.
Q. Okay. What was -- was your position there the Senior Director of Global Real Estate?
A. It was.
Q. Okay. So it wasn't a real estate company, but your job related to real estate, is that right?
A. I was running the portfolio of all international real estate and supervising all the major projects. I built over $600 million worth of Class 1 clean rooms, technical spaces, office space and even some residences.
Q. So your work focused on construction then, is that right?
A. No. It -- well, not specifically on construction. I would go over to Israel and negotiate the purchase of a 20-acre piece of land for a future apps lab.
I would go to Japan and look at an expansion of a Japanese

technical facility.

So while my task was related to real estate, it involved vetting the feasibility of all of these projects for Applied Materials, which is a Fortune 500 company, with -- about the size of Bio-Rad is currently now. And, you know, we had 10- or 13,000 employees worldwide.

Q. When you were going to Japan to discuss these technical facilities you were not predicting a future stock price, were you?

A. I was always asked, but no.

Q. Okay. And you weren't offering any opinions regarding employee stock options, correct, or valuing employee stock options?

A. As I said in my deposition, I did counsel. I was the lead on a group of people who worked for me. And we at Applied, much like Bio-Rad, gave stock options to our employees.

Q. Okay. So that one time at Applied Materials when you were somehow involved in discussing employee stock options, you weren't aware of the factors that went in to determining the number of stock options that a certain employee would receive, is that right?

A. No, that's wrong. We were given a pool of stock options for our group. In this case it was called the Global Real Estate and Facilities Group. And a pool award came down from, presumably, the CFO and the Human Resources department and that was then allocated to individuals. And as managers and as senior managers, we got to determine what shares of -- or how much each employee would get based on their performance against the metrics and the job description and the goals that they had set for themselves and, of course, on the overall performance of the group.

MR. LANDES: Your Honor, I would like to play Page 118, Line 22 to Page 119, Line 25 of the witness's deposition. The name of the deponent is Wei Chiu. The date of the deposition is September 20th, 2016. The person asking the questions is Meryn Grant, and this was not a Rule 30(b)6 deposition.

THE COURT: Any objection?

MR. CLUNE: Just a moment, your Honor.

(Brief pause.)

MR. CLUNE: No objection.

(Videotape played in open court, not reported.)

BY MR. LANDES

Q. Mr. Chiu, aside from this case, you've never provided expert testimony regarding the valuation of employee stock options or restricted stock units, have you?

A. I've never provided testimony, correct.

Q. Okay. So this case is the first time you're provided testimony on that subject?

A. Correct.

Q. You've also never -- oh, sorry about that.

You've also never provided expert testimony regarding the number of employee stock options or restricted stock units that someone might receive in the future, is that right?

A. That's correct.

Q. So this case is the first time that you're providing expert testimony on that subject, correct?

A. On the number of shares.

Q. Right.

A. Yes.

Q. Okay. In this case you used a method that you described to the jury called the compound annual growth rate to predict Bio-Rad's future stock price, is that right?

A. Correct.

Q. You've never submitted expert testimony using the compound annual growth rate method to predict future stock prices, have you?

A. Not for stock prices, correct.

Q. Okay. So this case is the first time you've ever provided expert testimony using the compound annual growth rate to predict future stock prices, correct?

A. That is correct.

Q. Let's talk a little about the compound annual growth rate. To determine Bio-Rad's compound annual growth rate that you used in this case you looked at Bio-Rad's stock price on two dates, is that right?

A. That is correct.
Q. The first date was January 18th, 1988, which was the date that Mr. Wadler started working at Bio-Rad, is that right?
A. That's right.
Q. Okay. The second date you looked at was June 29th, 2016, which was the date of your expert report in this case, is that right?
A. That's correct.
Q. And over that 28-and-a-half year period you determined that Bio-Rad stock increased by a total of 2,403 percent, correct?
A. I don't remember the exact number, but I'll take your word for it.
Q. Okay. So essentially what you found was that in 2016 Bio-Rad stock was worth 24 times more than it was worth in 1988, 28-and-a-half years ago, is that right?
A. Yes.
Q. Okay. And then what you did was you averaged out that growth over 28-and-a-half years and you came out that the average growth over 28-and-a-half years was 11.8 percent per year, correct?
A. No. So in order to calculate a compound annual growth rate, you don't average anything. So let me use a simple example.
Let's consider the number eight. The compound annual growth rate of eight is two. Two times two times two equals eight. And basically that says that every period the number is is going

to multiply by two.

So what I did was calculated the compound annual growth rate based on the increase, but it's not an averaging. Frankly, it's the 28-and-a-half root of whatever that multiple is.

Q. Okay. Thank you for that explanation.

And based on the calculation that you did, you predict that Bio-Rad stock will continue to grow until the year 2022 at 11.8 percent per year, correct?

A. I used the compound annual growth rate as a metric that showed me what had happened in the last 28 years and what would probably continue to grow, how the company would perform going forward, because, or unless -- and I think I did say this in my report, unless there was some major change in their products, their markets, something that changed their business.

This is a company that's in the healthcare industry --

MR. CLUNE: Objection, your Honor. Move to strike.

THE COURT: Sustained. Just answer his question, please.

BY MR. LANDES

Q. So your prediction -- I just want to make sure I'm clear. Your prediction is that at least through the year 2022 Bio-Rad stock will continue to grow, and I think your words were, at a repeatable sustainable growth rate at 11.8 percent; is that right?

A. Correct.

Q. Okay. So the 28-and-a-half year period that you looked at, you have no reason to believe that the 28-and-a-half year period that you looked at is any more predictive of future growth compared to any other date range you could have looked at, is that right?

A. No. But I have a high confidence level in a long period of time. 28-and-a-half years of sustained growth is a very, very compelling growth rate.

Q. You could have looked at a 15-year period, right; from 2001 to 2016, for instance?

A. Well, then you're cherrypicking numbers. You know, do the liars -- do the numbers lie? Depends on the period you're going to pick.

I can manipulate those numbers, and I'm not trying to. I was trying to look at the most conservative period of time that was in consort to Mr. Wadler's employment at Bio-Rad and get a prediction of how that company fared.

Q. Okay. So what you're telling me, then, is that if you picked a different range, the compound annual growth rate that you determined could have been completely different, is that right?

A. That's right.

Q. Okay. And you did no assessment to determine whether any one date period is more predictive of the future than any other date range, did you?

A. No, I didn't. But, as I said, the longer the stick, the

longer you -- the period of time you have when you're doing the calculation, it makes the data more reliable.
Q. Okay.
A. If I picked only five years, that would have been a -- problematic in my mind.
Q. So aside from the fact that you have never used compound annual growth rate in any testimony to predict future stock prices, you're not aware of any published article anywhere ever using compound annual growth rate to predict future stock prices, is that right?
A. I'm not aware.
Q. Okay. Are you aware that investment funds are required by law to tell investors that past performance doesn't predict future results?
A. Oh, yes.
Q. You're aware of that?
A. Absolutely.
Q. Okay. You don't know why they have to provide that warning, do they -- do you?
A. I have an educated opinion about it.
Q. Okay. What's your opinion of why they have to tell investors that past performance doesn't predict future results?
A. When we were doing the securities documents down in Texas, we did 11 limited partnerships, and I had a great securities counsel, and I also did a securities license. And the

admonition to me from my securities counsel was: Wei, this can be the worst investment on the planet. You just have to tell the investors that.

And I think the admonition that the securities company requires that you say past performance is not a predictor of future growth is part of that disclosure requirement that the SEC requires.

Q. So then is it your opinion today that it is true that past performance does predict future results?

A. No.

Q. Okay. Aside from published articles, you're not aware of any securities analyst or any investor analyst ever using compound annual growth rate to predict future stock prices, are you?

A. I'm not -- I haven't done an exhaustive review of all the literature and I am not aware.

Q. Okay. I'm not asking for an exhaustive review, but you're not aware of any, are you?

A. Not as I sit here.

Q. Okay. Mr. Chiu, what are Generally Accepted Accounting Principles?

A. They are accounting principles promulgated by the Accounting Board.

Q. Okay. Is it -- have you heard them described as GAAP or G-A-A-P?

A. Yes.

Q. Are you aware that GAAP lays out a number of different accepted methods for estimating the value of employee stock options?

A. I didn't know there were a number of them, but I do know they have some.

Q. Okay. So there are some different ways that the Generally Accepted Accounting Principles set out for estimating the value of employee stock options.

Isn't it true that the compound annual growth rate method that you use here is not one of the accepted methodologies under GAAP for valuing employee stock options?

A. I don't know that.

Q. You haven't looked to see?

A. No.

Q. Okay. You also offer an opinion in this case regarding the number of employee stock options and restricted stock units that Mr. Wadler might have received in the future, is that right?

A. That's correct.

Q. Okay. And your opinion is that if Mr. Wadler had not been fired in 2013, he would have received the same number of employee stock options and restricted stock units until the year 2022 that he had received from 2007 to 2012, is that right?

A. That's correct.

Q. Okay. You didn't look back before 2007, is that right?

A. I don't believe so.

Q. Okay. And, once again, I just want to confirm. This is the first time you've ever provided expert testimony regarding the number of employee stock options or restricted stock units that an employee might receive in the future, is that right?

MR. CLUNE: Objection. Asked and answered.

THE COURT: It's been asked and answered. Please move on.

MR. LANDES: Okay.

BY MR. LANDES

Q. You would agree with me that the grant of employee stock options or restricted stock units at Bio-Rad was discretionary, right?

A. Yes.

Q. Okay. There is no guarantee that Mr. Wadler would have received any employment -- employee stock options or restricted stock units at all in the future, is that right?

A. That is correct.

Q. He might have retired, is that right?

A. I don't know -- I don't have an opinion about that.

Q. Okay. Even if Bio-Rad had continued to grant Mr. Wadler employee stock options and restricted stock units, the number of those grants could have changed year to year, is that right?

A. Could have.

Q. And you're not aware of the factors that Bio-Rad considers when it determines the number of employee stock options and restricted stock units to award an employee, are you?

A. Not specifically Bio-Rad.

Q. Okay. You did no assessment to determine how Mr. Wadler's performance at work might affect the number of employee stock options or restricted stock units he would receive in the future?

A. It was not part of my work skill.

Q. Okay. So the last year that Mr. Wadler received employee stock options or restricted stock units was 2012, correct?

A. Correct.

Q. I think you testified earlier that your prediction or assumption that he would receive the same number of employee stock options or restricted stock units in the future was that you looked at the stock awards, similar stock awards for another senior employee in the years 2013 through 2015, is that right?

A. That's correct.

Q. Okay. That employee was Ms. Tsingos?

A. It was.

Q. And your testimony was that your assumption was reasonable because Ms. Tsingos' -- the number of -- the amount of stock compensation that she received actually increased in 2013 to 2015?

A. That's right.

Q. Was that your opinion?

A. That's right.

Q. But, in fact, the number of employee stock options and restricted stock units that Ms. Tsingos received, it didn't increase after 2012, did it?

A. It actually -- it actually did.

MR. LANDES: Your Honor, I would like to play Page 122, Lines 5 through 9 of the witness' deposition.

THE COURT: Any objection?

MR. CLUNE: Hold on one second, your Honor.

What were the line numbers again? I apologize.

MR. LANDES: Page 122, Lines 5 to 9.

MR. CLUNE: I'd ask that we read Page 121, Line 25 through 122, Line 4 for context.

THE COURT: Yeah, go ahead. Well, I don't know. He's only got his clip, but you can start by reading those lines and then play your clip.

MR. WAGSTAFFE: Your Honor --

THE COURT: Just read, please.

Do you have the clip that we can go back to 121/25?

(Brief pause.)

THE COURT: Anybody know?

MR. KOTARSKI: We're getting it right now.

(Videotape played in open court, not reported.)

BY MR. LANDES

Q. So, Mr. Chiu, you would agree, then, that it's certainly possible for the number of employee stock options or restricted stock units granted to senior management to decrease after the year 2012, right?

A. Right.

Q. In fact, those numbers did decrease after 2012 for the only senior executive whose data you reviewed?

A. That's not true.

Q. And, Mr. Chiu, I'm asking about the number of employee stock options and restricted stock units.

A. I have them in front of me. After doing this deposition, I did, in fact, go in detail and look at it because I had only looked at 2013. In 20- --

Q. In --

A. In 2012 I believe Ms. Tsingos received 1,000 RSUs and 3250 options.

Q. Let's start with the employee stock options that Ms. Tsingos received in 2012. You said it was 3,250 units?

A. Correct.

Q. How many did she receive in 2013?

A. 3200.

Q. So that's less, correct?

A. That is correct.

Q. And how many did she receive in 2014?

A. 2000.

Q. That's less than 3200, right?

A. Okay.

Q. Okay. And how much did she receive in 2015?
A. 2500.
Q. Okay. And that's less than the 3250 that she received in 2012, right?
A. That's correct.
Q. Okay. Ms. Tsingos received 1,000 restricted stock units in the year 2012, right?
A. Correct.
Q. How many did she received in 2013?
A. 801.
Q. Sorry?
A. 801.
Q. Okay. 801 is less than 1,000, right?
A. That is correct.
Q. Okay. So it's certainly possible for the number of employee stock options and restricted stock units that a senior executive receives to decrease after the year 2012, correct?
A. Right. But then you look at 2014 and 2015 and she received 2,000 RSUs, which was double the amount that she had historically received and, again, 2500 in 2015.
And RSUs are much more valuable to an employee because they are not tied up in a long option period and subject to the fluctuations. The price they get is the price on the date they were awarded.
Q. You have no understanding of the factors that determined how

or why Ms. Tsingos' stock compensation fluctuated, do you?

A. I assume that she was doing a really good job and they increased the RSUs, as well as the -- the RSUs in order to compensate her.

Q. You just assume that. You have no basis for that assumption?

A. That's right.

Q. Okay. And you have no basis to assume that those same factors would apply to Mr. Wadler, do you?

A. Correct.

Q. Okay. Mr. Chiu, would you agree with me that a dollar today is worth more than the right to receive a dollar a year from now?

A. No.

Q. You wouldn't agree with me?

A. I would agree with you that a dollar today is worth more than a dollar tomorrow.

Q. So there's a situation where it would be better to have the right to receive a dollar one year from now than to have that dollar in your hand right now?

A. No. I was -- I'm sorry, counselor. I was contradicting you. I'm not talking about a right to receive.

THE COURT: So he was. I want you to answer his question. Say the question back again, please.

MR. LANDES: Sure.

BY MR. LANDES

Q. Mr. Chiu, would you agree with me that a dollar today is worth more than the right to receive a dollar one year from now?

A. The right to receive a dollar?

Q. Yes.

A. Not necessarily.

Q. Not necessarily. What is a situation where a conditional right to receive a dollar one year from now is worth more than having that dollar today?

A. A dollar today is always worth more than a dollar tomorrow, but if you have done a contract in which you will pull back stuff to a present value, that right to receive may be contractually an obligation that you can take to the bank, and it's as valuable as a dollar in your hand.

Q. So you're saying that the -- a conditional right to receive a dollar in the future might be worth the same amount as a dollar today?

A. Yes.

Q. But it wouldn't be worth more than a dollar today, right?

A. Unlikely.

Q. Okay. Unlikely or impossible?

A. Unlikely.

Q. Okay. Is there a situation where a dollar in the future is worth more than a dollar today?

A. No.

Q. Okay. One of the reasons that a dollar today is worth more than a dollar one year from now is that you can invest a dollar today and earn interest, right?

A. Correct.

Q. Okay. And another reason a dollar today is worth more than a dollar one year from now is that circumstances could change and you might not get that dollar a year from now, right?

A. Correct.

Q. And along those same lines, a share of stock today is worth more than a share of stock one year from now, right?

A. Again, not necessarily. It depends on what the share of the stock is worth in the future and how you discount that back to today's value.

Q. So if -- sitting here today, would you rather have someone give you one share of stock or have someone promise to give you one share of stock a year from now?

A. Depends on what the stock would be.

Q. How about Bio-Rad stock?

A. Don't know enough about the company. Don't have an opinion.

Q. Okay.

MR. LANDES: No further questions.

THE COURT: Redirect?

MR. CLUNE: Yes.

REDIRECT EXAMINATION

BY MR. CLUNE

Q. I would first like to talk about the comparison that you made to Ms. Tsingos that counsel was referencing as decreasing. Did you prepare -- sorry.

Have you seen a graphic that analyzes your understanding of Ms. Tsingos' compensation versus Mr. Wadler's as it relates to these stock options?

A. I have.

Q. And if you'd look at Demonstrative No. 3 for Chiu?

(Witness complied.)

Q. Is this the graph that you were referring to?

A. Yes, indeed.

Q. And would presentation of this demonstrative to the jury aid your testimony regarding your analysis of the comparison of Ms. Tsingos' stock related compensation to that of Mr. Chiu's?

A. Yes.

Q. Or Mr. Wadler's? I apologize.

MR. CLUNE: Your Honor, I'd like to show this demonstrative to the jury.

THE COURT: Any objection?

MR. LANDES: No objection, your Honor.

THE COURT: Okay. Go ahead.

MR. CLUNE: Okay. And if you could, I guess, zoom in on the top part regarding Ms. Tsingos' compensation, Ms. Guzman?

(Document displayed)

BY MR. CLUNE

Q. Now, in this -- in this analysis does it show how many shares of restricted stock Ms. Tsingos received starting in calendar year 2007?

A. Yes.

Q. And how many shares of restricted stock did she receive?

A. 1,000.

Q. And how many shares of restricted stock did she receive in 2008?

A. 1,000.

Q. And what about the following year?

A. 1,000.

Q. So for how many years does Ms. Tsingos receive 1,000 shares of restricted stock?

A. Through 2012.

Q. And what was Mr. Wadler receiving during that time in terms of numbers of shares of restricted stock?

A. The same amount.

Q. So 1,000?

A. Yes.

Q. Okay. Now, if you look over to the "Stock Options" side on the right, how many shares of stock options did Ms. Tsingos receive in 2007 calendar year?

A. 3,000.

Q. And what about the next year?
A. 3,000.
Q. And what about the year after that?
A. 3,000.
Q. For how many years did Ms. Tsingos receive 3,000 shares of stock options?
A. Through 2011.
Q. And how many shares of restricted -- or of stock options did Mr. Wadler receive during that period?
A. 3,000 through 2012.
Q. And I see that in 2012 for Ms. Tsingos, she receives a slightly different amount than Mr. Wadler, isn't that correct?
A. Yes.
Q. And how much different amounts did she receive in 2012?
A. She receives 250 more stock options.
Q. More than who?
A. More than Mr. Wadler.
Q. Okay. And did you assume that Mr. Wadler would receive 250 more stock options in 2012?
A. No.
Q. Okay. And you mentioned that you had gotten this information from, I believe, Bio-Rad's DEF 14 --
A. 14A.
Q. Okay. And remind the jury what those documents are?
A. That's a proxy statement filed by the company.

Q. Okay. And looking forward for Ms. Tsingos from 2013 to 2015, do you see the points where Ms. Tsingos' number of shares of restricted stock or stock options might decrease?
A. In 2013 her -- 2013 her RSUs dropped from 1,000 to 800.
Q. And what happened when that -- when that occurred regarding her stock options?
A. They went up.
Q. And do you have any way of knowing whether or not the overall value that Ms. Tsingos received in those stock related compensation went up, stayed the same, or went down?
A. It went down very slightly, but basically stayed the same as 2012.
Q. And where -- and are you looking at the -- where are you getting that information?
A. Looking at the far right column, blue, that says "Total Stock Comp - Tsingos."
Q. And those are dollar amounts, correct?
A. Correct.
Q. And those put dollar amounts on how much these stock options and restricted stock are worth, correct?
A. Yes.
Q. Did you make up these numbers?
A. No.
Q. Who did?
A. We calculated them out based on the exercise in stock

prices.

Q. And -- but who was the one who identified the value, for example, of Ms. Tsingos' 2012 1,000 shares of RSUs over here as 107,000. Was that you?

A. No. That was in the DEF 14, the proxy statement.

Q. And who writes the DEF 14s?

A. The -- the CFO of the company does.

Q. And the company here was?

A. Bio-Rad.

Q. So Bio-Rad is saying how much are these options worth for Mr. Wadler -- Ms. Tsingos in 2011?

MR. LANDES: Objection. Leading.

THE COURT: Sustained.

BY MR. CLUNE

Q. Okay. Tell us, looking at this how much -- well, whether or not Bio-Rad said Ms. Tsingos' compensation, in the form of stock related compensation went up or down?

A. In what years?

Q. In 2012, for example.

A. In 2012 the value of her RSUs was $107,320.

Q. And what happened in -- in the next year?

A. Her RSUs value went down slightly.

Q. Okay. And what happened to her stock compensation in terms of how that was valued?

A. Her stock compensation went from $107,642 in 2012 to

120,314. So despite the reduction in shares, the actual compensation up.

Q. Okay. And now I want to talk about the right-hand portion of this column here.

A. Okay.

Q. Projecting forward for Mister -- when Mr. Wadler was terminated, does examination of how much Bio-Rad said that the options award to Ms. Tsingos were worth tell you anything about your projections here?

A. Again, I think my projections were conservative. Her -- her total compensation increased dramatically in 2013, '14 and '15.

Q. And does the fact that, for example, here there are 800 rather than 1,000 change your analysis there (indicating)?

A. No.

Q. Okay. Now, are these shares of restricted stock specific to an individual? Would, for example, a share of restricted stock given to Mr. Wadler be worth different than a share of restricted stock given to Ms. Tsingos?

A. No.

Q. And so is it possible to calculate how much Mr. Wadler himself received in 2012, his last full year of employment with Bio-Rad?

A. Yes.

Q. And did you do that?

A. Yes.

Q. And what did you calculate Mr. Wadler to receive in his last full year of employment in terms of total stock compensation?
A. $206,682.
Q. And is that on your chart?
A. Yes.
Q. (Indicating). And following opposing counsel's method of just ballparking it, if you times $200,000 times, let's say, 10 years or so when you projected out your overall projections, how much would that be in terms of just stock related compensation?
A. At the 11.8 percent growth rate or --
Q. No. Just taking Bio-Rad's numbers. Say, ballpark it at 200,000, because I realize little numbers are hard to multiply on the fly. What is that times 10?
A. Over $10 million -- $2 million.
Q. And what did you predict Mr. Wadler's overall stock related compensation would be? What range did you project?
A. You mean, his damages? His losses?
Q. Yes.
A. 2.5 million.
Q. Okay. And what was the low end of your range?
A. 2.1 million.
Q. And how does the number that Bio-Rad put as being the value of Mr. Wadler's stock options ballparked over 10 years compare to your analysis that you did here?
MR. LANDES: Objection. Misstates the evidence.

THE COURT: Overruled.

A. It's very comparable.

MR. CLUNE: No further questions, your Honor.

MR. LANDES: Nothing further.

THE COURT: Thank you, sir. You may step down.

(Witness excused.)

MR. LABAR: Your Honor, we next have some reading of written deposition testimony.

THE COURT: Great.

MR. WAGSTAFFE: Your Honor, just for the record -- I'm sure you know; of course, the jury might not -- some depositions are videotaped and some are not.

THE COURT: Yeah. We've talked about this before and I think I read you an instruction on depositions. And this is going to be a reading from a deposition. The part of the lawyer will be played by a lawyer, and the part of a witness will be played by a member -- another member of staff.

So you can proceed. Tell us what you're going to read.

MR. LABAR: Your Honor, we'll now read from the deposition of Alice N. Schwartz taken on September 92016. The lawyer asking the questions was Michael von Loewenfeldt, counsel for plaintiff, and the deposition was not a Rule 30(b)6 deposition.

ALICE SCHWARTZ,

called as a witness for the Plaintiff herein, testified via testimony read in open court by Mr. Ivo Labar and Ms. Sarah

Guzman as follows:

MR. CLUNE: First, reading is from Page 7, Lines 20, 8 through 9.

"**QUESTION:**Okay. How is your memory generally? Is your memory okay?

"**ANSWER:** Not as good as it used to be and it's getting worse every day. So I probably never had a very good memory because I always took very careful notes of all when I was in school. But more recently it is -- many things I would like to remember I find that difficult to remember."

MR. LABAR: Please read "Answer" before you start, okay? Thank you.

The next reading, your Honor, is Page 8, Lines 17 through Page 9, Line 4.

"**QUESTION:**True. Are you still a member of Bio-Rad's Board of Directors?

"**ANSWER:** Yes.

"**QUESTION:**Okay. And when did you first become a member of the Board of Directors?

"**ANSWER:** I could not tell you when because I have been in the company. I mean, when I started the company. So I guess I have been a director ever since there has been a Board of Directors and I can't tell you how long ago when the initial Board of Directors was started.

"**QUESTION:**Okay. Are you the person who controls the majority of voting shares on the Board?

"**ANSWER:** Yes."

MR. LABAR: Next reading, your Honor, is Page 16 Lines 20 through 25.

"**QUESTION:**Okay. Sandy was at Bio-Rad for more than 20 years, right?

"**ANSWER:** Yes.

"**QUESTION:**And he was an important part of making it the company that it is today?

"**ANSWER:** Yes."

MR. LABAR: Next reading, your Honor, is Page 12, Lines 11 through 20.

"**QUESTION:**Okay. And I want to ask you about the time frame in the 2010 to 2013 period, okay?

"**ANSWER:** All right.

"**QUESTION:**All right. During that time frame, did you see Mr. Wadler outside of Board meetings?

"**ANSWER:** Not that I recall.

"**QUESTION:**Okay. All right. Since you weren't there -- here present at work to watch how he interacted with other people, is that right?

"**ANSWER:** I don't -- no, I don't believe so."

MR. LABAR: Next reading, your Honor, is Page 13, Line 24 through Page 14, Line 2.

"**QUESTION:**Okay. And sitting here today, you don't have a memory of discussing Mr. Wadler's job at a Board meeting?

"**ANSWER:** No."

MR. LABAR: Next reading, your Honor, is Page 14, Line 19 through 20 -- oh, I guess it's 20 -- Line 19 through 15/2.

"**QUESTION:**Right.

"**ANSWER:** My husband died in the middle of 2012. It was a very long period of estate settlement and actually it's -- this period that I understand is the period in question about the termination was the June and July period. The estate was coming to the final settlement with the federal estate documents and setting up of trusts. Also, some changes in a lot of personal business right at that particular point."

MR. LABAR: Next reading, Line 15 -- Lines 3 through 7.

"**QUESTION:**Okay. And I'm sorry.

"**ANSWER:** So it's during -- during this -- this -- this period of time. I think most of my -- most of my activities were being spent on personal business rather than on company business."

MR. LABAR: Next and final reading, Page 17, 8 through 15.

"**QUESTION:**Okay. Were you aware that Mr. Wadler made a report to the Audit Committee in February 2013 asking that certain issues in China be investigated?

"**ANSWER:** I don't have any knowledge about those kinds of things.

"**QUESTION:**Okay. Did anyone talk to you about that at all in 2013?

"**ANSWER:** Not that I recall."

MR. LABAR: Your Honor, that completes Alice N. Schwartz's deposition testimony.

THE COURT: Thank you.

MR. LABAR: Then the next reading, your Honor, will be from the deposition of Albert J. Hillman taken on September 29, 2016.

The lawyer asking the questions was Kenneth Nabity, counsel for plaintiff Sandy Wadler, and the deposition was not a Rule 30(b)6 deposition.

THE COURT: Okay. Proceed.

MR. LABAR: Thank you, your Honor.

ALBERT HILLMAN,

called as a witness for the Plaintiff herein, testified through testimony read in open court by Mr. Ivo Labar and Mr. Kenneth Nabity as follows:

First reading is Page 5, Lines 9 through 14.

"**QUESTION:** Good morning, Mr. Hillman.

"**ANSWER:** Good morning.

"**QUESTION:** My name is Ken Nabity and I'm with the law firm Kerr and Wagstaffe. We represent plaintiff Sandy Wadler in this case.

"**ANSWER:** I understand."

MR. LABAR: Next reading, your Honor, is Page 12/24 to Page 13, Line 2.

"**QUESTION:** Okay. And when did you initially become a member of the Board of Directors at Bio-Rad?

"**ANSWER:** When they went public. I was asked to become a member of the Board by the company."

MR. LABAR: Next reading, your Honor, is Page 14/Line 24 to Page 15, Line 3.

"**QUESTION:** Generally speaking, what is the role of the Board of Directors at Bio-Rad?

"**ANSWER:** To -- as best as I can recall, to pass on major funding issues, acquisitions and funding for new projects approving them."

MR. LABAR: Next reading, your Honor, is Page 26, Lines 5 through 8.

"**QUESTION:** Can you recall any time when you voted against Norman Schwartz when a vote was brought to the Board of Directors?

"ANSWER: No."

MR. LABAR: Next, your Honor, is Page 27, Line 13 through Page 28, Line 8.

"QUESTION: So when Norman Schwartz was the CEO, can you recall any votes that did not result in a unanimous vote?

"ANSWER: Not that I can recall.

"QUESTION: Can you recall a vote where independent directors ever overruled the Schwartz family on any matter?

"ANSWER: No.

"QUESTION: And why is that? Is that because everyone just gets along? Do you deliberate a lot? That sounds like this is a fairly friendly Board.

"ANSWER: It was a friendly Board, but the Schwartz family ran the company and you really -- you had no choice. They made the decisions or they could force their decisions, but I don't recall that happening."

MR. LABAR: Next reading, your Honor, is Page 103, Lines 6 through 11.

"QUESTION: And you had independent voting abilities, isn't that correct?

"**ANSWER:** Not really. The Schwartz's could pull the rug at any time because they controlled the company. They controlled the votes. And so I would not be re-elected if I didn't go along."

MR. LABAR: Next reading, your Honor, is Page 103, Lines 15 through 24.

"**QUESTION:**So you, as a 34-year member of Bio-Rad's Board of Directors, went along with what Mr. Schwartz, Mr. Norman Schwartz requested because otherwise he would just eliminate you from the Board, is that correct?

"**ANSWER:** No. I said he and his family ran the company and we went along with what he said that was reasonable."

MR. LABAR: Next reading, your Honor, is Page 31/13 through 15.

"**QUESTION:**While Mr. Wadler was at Bio-Rad, did you have a good relationship with him?

"**ANSWER:** Yes."

MR. LABAR: Page 29, Lines 23 through Page 30, Lines 4.

"**QUESTION:**When was the first time that you recall discussing potentially terminating Mr. Wadler?

"**ANSWER:** I don't think I had that discussion.

"QUESTION: Did you -- you don't recall Mr. Wadler's termination being brought up at a Board meeting?

"ANSWER: Not that I recall."

MR. LABAR: Page 30, Lines 12 through 16.

"QUESTION: Slightly more broadly, we're talking about his termination. Do you recall ever discussing Mr. Wadler's performance at any Board of Directors meeting?

"ANSWER: No, I don't recall."

MR. LABAR: Page 30, Lines 20 through 22.

"QUESTION: Did you have any involvement in the decision to terminate Mr. Wadler?

"ANSWER: Not that I recall."

MR. LABAR: Page 67, Lines 17 through 19.

"QUESTION: Do you have any medical conditions that affect your condition?

"ANSWER: Old age, 85."

MR. LABAR: Last reading, your Honor. Page 123, Lines 7 through 18.

"QUESTION: Mr. Hillman, you testified on the record that you're 85 years old?

"ANSWER: I will be in another month.

"QUESTION: Okay. And how would you say your memory is at this time?

"ANSWER: Not very good.

"QUESTION: Is it possible that you remember things, say, from three months -- that you remembered things three months ago that you don't remember now?

"ANSWER: Three months is probably -- that's quite possible. Certainly, when you go back a couple of three years, I'm hopeless."

MR. LABAR: Your Honor, that completes the reading from Mr. Hillman's deposition.

And at this time we would like to play the videotaped deposition of Mr. Lou Drapeau.

THE COURT: Okay.

MR. LABAR: Your Honor, may we commence?

THE COURT: Yes.

THE COURT REPORTER: And, your Honor, this is not reported?

THE COURT: Correct.

LOUIS DRAPEAU,

called as a witness for the Plaintiff herein, testified via videotaped deposition played in open court.)

(Time noted: 11:43 a.m. until 12:13 p.m.)

MR. WAGSTAFFE: Your Honor?

THE COURT: Yes, Mr. Wagstaffe.

MR. LABAR: Your Honor, plaintiff rests.

THE COURT: Thank you.

So we're going to take -- it's 12:13. We're going to take our lunch break in a moment.

So remember the admonitions. Don't communicate about this case at all and I'll see you at 1:15. Thank you.

(Jury exits the courtroom at 12:13 p.m.)

THE COURT: All right. Where are we?

MR. WAGSTAFFE: We're into the defense case, your Honor.

THE COURT: Excellent.

MR. ASPERGER: Our first witness will be Mr. Norton, your Honor.

THE COURT: Okay. And how long do you expect Mr. Norton to take?

MR. ASPERGER: Direct could be roughly two hours; a little more, a little less. It depends how it goes, he -- yeah.

THE COURT: All right. So we need to take care of the objections regarding opinions before Mr. Norton. Is there anything else we need to take care of plaintiff Mr. Norton testifies?

MR. ASPERGER: I think they had one objection to one of my documents, your Honor. And I have two objections to theirs, but we probably won't get to theirs.

THE COURT: Okay. Well, let's -- let's talk about -- I would just like to talk about the documents first, and then I want to get your -- I want to get a read on what you're really going to do with him with regard to these opinions.

I'm not going to rule now. We're going to come back before

1:15 and take a little argument and rule on it then.

But on the documents, what are the issues?

MR. LABAR: I believe our objection was to 232?

(Brief pause.)

MR. LABAR: Your Honor, our objection is on document 236, which is an email chain not involving Mr. Norton. That's our objection as hearsay, your Honor.

MR. ASPERGER: The response, your Honor, is that while this chain doesn't have his name on it, he received this whole chain. It was forwarded to him by, I believe, Martine Baemon -- no, by George Turner at Davis Polk.

It was something that he considered that he advised the Board on that was highly relevant to the issue of the Chinese translation of the distributor agreements and it's included in detail in the final report that was given to the Board on June 5th at which he participated and he also participated in preparing that report and commenting on that report with Davis Polk. So it is highly relevant and he's very familiar with it. It's just this particular exhibit doesn't have his name on it.

MR. LABAR: Your Honor, that's the reason I raised the objection. There is no evidence that -- or foundation that he received it. But if they do that, then I guess it's coming in.

THE COURT: Okay. All right. Lay a foundation that he received it and then it will be admitted.

MR. ASPERGER: All right.

THE COURT: Okay. Next.

MR. ASPERGER: I have objections to two exhibits, your Honor. The first one is Exhibit 32 and the second one, I believe, is Exhibit 41. Let me just double check here.

Yeah, 32 and 41 are both exhibits that Mr. Norton did not receive. He is not on them. And they are clearly hearsay as to him and there is no foundation as to him as to a number of the statements that are in there.

For example, on Exhibit 41, it refers to Bill Kelly's advice from Davis Polk that the March 1 10-K filing deadline is not going to be met. And I assume that may be one of the reasons they want to introduce that into evidence.

There is really no foundation to introduce these through this witness, your Honor. There are some references to what's going on with Mr. Norton, but whether they are true or not and the fact that there are statements in these documents, is not something he saw at the time.

MR. LABAR: I just intend to ask him, your Honor, if he was doing what these people say he was doing.

THE COURT: So, first of all, you'll stipulate they are both business records of Bio-Rad, right?

MR. ASPERGER: They are admissible your Honor. They are business records of Bio-Rad.

If the questioning is going to be limited to what he was doing relating to his work, no, I don't have an issue with it.

I do have an issue with the cross examination point: So Mr. Kelly said...

THE COURT: Well, okay. But you're not objecting to the admissibility of these documents. You're highlighting your concern about where the cross might go.

MR. ASPERGER: And putting in front of him things he never saw and doesn't have any foundation to know.

THE COURT: Okay. So since they are business records, that is going to overcome the hearsay objection, and you'll just have to be careful with your cross.

MR. LABAR: Thank you, your Honor.

I think that's the same issue we have with 35.

THE COURT: You said 32 and 41.

MR. LABAR: I'm sorry. Excuse me.

MR. ASPERGER: It's the same type of issue, so I think your ruling addresses both issue.

THE COURT: I guess, I just want to get a little bit of a read on the opinion. I understand what the rule says, and I understand the objection, and I understand the response.

I'm wondering how much of a problem we have here. What do you intend to ask, for example, Mr. Norton about -- that bears on his actual opinions? And I'll tell where you I'm going.

MR. ASPERGER: Okay.

THE COURT: If you ask Mr. Norton: Did you tell the Board of Directors something? Did you tell Mr. Wadler something? Did you tell Mr. Schwartz something? That's one thing. And that's percipient witness testimony, as far as I'm concerned. It may or may not be admissible for other reasons, but it's not objectionable for failure to disclose as an expert.

In that -- and this case will necessary include opinion testimony. Are you going to do something more than that?

MR. ASPERGER: Your Honor, the question is where the line is drawn. I think you hit the nail on the head in that everything he will testify about, including the subjects that the plaintiff is concerned about, were part of his advice to the Board of Directors.

So to the extent that there is a question, for example, as to whether documents are missing and there is a books and records issue or an FCPA issue, he looked at that in 2010 and '11. He advised the Board on that. He looked at it again in 2013.

THE COURT: My question to you is: How are you going to ask that question? How are you going to get into it?

MR. ASPERGER: I'm trying, as best I can, to ask it in the context of what he's advising the Board. Sometimes it will be to lay the context. It will be: What did he do? What was the scope? And then describe the -- how the documents -- how does a missing document relate to his advice?

And, honestly, I can't say whether -- which comes first all the time, but it is -- always that connection will be made, your

Honor.

THE COURT: Well, yeah. Okay. So in the clear example of: This is your report that you gave to the Board of Directors. What was your advice in your report to the Board of Directors at the meeting on blah. Okay? And he says: My advice was this.

I don't suppose you have an objection to that going in?

MR. WAGSTAFFE: No, your Honor.

THE COURT: Okay. And then he can presumably explain his advice; explain the advice that he gave and explain the basis for the advice that he gave.

MR. WAGSTAFFE: Now, explain the advice, basis takes us to experts.

THE COURT: Yeah.

MR. WAGSTAFFE: For example, I've gone to China all the time. This is what I know. I have this. If he told them that, I understand. But he can't be qualified as an expert in China practices just because they think he was a good guy. That's an expert opinion.

THE COURT: Right, right.

MR. WAGSTAFFE: So the basis only of communicating.

THE COURT: So only you -- your objection is anything other than a communicated opinion can't come in?

MR. WAGSTAFFE: That's right. I mean, your Honor, we can try and impeach him as to he said I -- if he testifies that he has all this experience, I can try to impeach. But the -- with respect to him offering what would be an expert opinion as to his basis, that's not allowed.

THE COURT: Okay.

MR. ASPERGER: I don't think any of it goes to the expert opinion, your Honor, because he's always intertwining that with what he's advising the Board.

And let me give you --

THE COURT: Yeah, but I understand that. You could say to him -- the objection is this: I advised the Board that this was no Foreign Corrupt Practices Act violation in China.

MR. ASPERGER: Right.

THE COURT: He did advise the Board that. He says -- and there is no books and records violation. And I advised the Board that the books and records of Bio-Rad were in excellent shape and -- but didn't tell them anything else about the bases for those opinions.

Do you get to ask him: What was the basis, not communicated to the Board, for your opinions on that subject?

MR. ASPERGER: Well, two responses, your Honor. First, I think in every instance he's explaining the bases because he's communicating with the Board and members of the Board and Lou Drapeau real time on many of these things.

For example, the alleged missing documents. He's making clear that the missing documents that are really the focus of the 2013 investigation are third-party documents and he looked at those issues in the first investigation and the second investigation. It can't be a books and records violation if it's a third-party document.

THE COURT: But he -- but he explains that. And to the extent he explains that to a member of the Board of Directors or management, Mr. Wagstaffe doesn't have an objection.

MR. ASPERGER: And I believe he's explained -- I'm trying to lay out the story and be as efficient as I can, your Honor, but I believe in every instance he will say these were things he communicated to the Board of Directors. Because he's literally having hundreds of conversations and emails with them.

THE COURT: Well, I understand that. But you're not seeking to -- let me just do it the other way.

You're not seeking to introduce any opinions he had or -- that were not communicated to members of management or the Board of Directors. That's right, isn't it?

MR. ASPERGER: Well, I think it all was communicated, your Honor. The devil is always in the details. I think if he communicates, there's no --

THE COURT: Listen. I need an answer to my question. We'll get to the details in a second, but you're not seeking to introduce any opinions that he held which were not communicated to the management or the Board of Directors, right?

MR. ASPERGER: I think all of it was communicated, your Honor. I'm going to have to go back and --

THE COURT: And if it wasn't communicated, you're not seeking to introduce it, right?

MR. ASPERGER: Well, not at this point your Honor, but I could imagine hypothetically that possibly coming up.

THE COURT: Yeah. Okay.

MR. ASPERGER: And I would still think if it goes to the underlying basis, it's admissible because he's giving them advice --

THE COURT: But we're going to separate that out.

MR. ASPERGER: Right.

THE COURT: So non-communicated opinions -- non-communicated bases for opinions. Are you going to try to get into evidence non-communicated bases for his opinions?

MR. ASPERGER: I believe he's communicated all of the bases to the directors and officers at various points in time.

THE COURT: So what you are saying is with respect to the subject matter of this objection, you're only seeking to introduce opinions that are kind of expert opinions -- they are expert opinions; the question is their admissibility -- or the bases for their opinions to the extent that they were actually communicated to management or to the Board of Directors; is that right?

MR. ASPERGER: That is my goal, your Honor. I mean, there is a long period of time. And so I could conceive of something coming up that we might need to deal with separately, but I don't think so. I think everything was communicated based on my understanding.

THE COURT: Well, so as long as you hew that line, you're not going to have a problem. As long as you hew that line, you are not going to have a problem.

Where I think you get into a problem and where the case law is not particularly helpful to me actually, given the recent changes in the rules, is when you talk about things that weren't communicated. It's -- it is in this context.

And so I'm not -- I'm more troubled by that. I'm going to look at it over the lunch hour, but as long as you hew to the line of, you know: What did you tell the Board of Directors on this, on that, or the management on this or that, et cetera, et cetera, that won't be problematic in terms of violating Rule 26. It's going to be more difficult if you get beyond that.

Maybe we'll have a discussion once you guys come back here just a few -- five minutes before 1:15 and I'll see if I have any more what qualifies as wisdom on the subject.

MR. ASPERGER: I believe I will be able to lay the foundation that the Court is articulating in every instance.

I would like, just in the event something comes up where I could be mistaken, to be able -- to reserve my rights to take that issue up at the time.

THE COURT: At the time or later. I mean, I don't like to do these things in front of the jury.

MR. ASPERGER: I will check over the lunch hour as well, your Honor.

THE COURT: Okay.

MR. LABAR: Your Honor, I --

MR. ASPERGER: So you're not blindsided on anything. In terms of his background and qualifications, he -- there is a lot of stuff that just relates to what he did in the FCPA. He actually participated in meetings involving the enactment that I'll want to bring out.

THE COURT: Background -- you know, the background I'm not terribly concerned about, because it goes to the question of whether or not -- I mean, we've already litigated about whether they picked the right person, whether he was good, whether he was bad, et cetera, et cetera.

But you were going to say something?

MR. WAGSTAFFE: Your Honor, we'll keep our ears open for the foundation. Your Honor had indicated I'd like it to be laid before they ask the question. Of course, depending on how your Honor looks at this.

Second is if he opens the door to basis even on what's communicated, I can cross examine him. We can cross examine on the basis.

THE COURT: Yes.

MR. WAGSTAFFE: He wrote an article that said "X" or something, sure.

THE COURT: Of course. That opens the door to them responding in kind --

MR. WAGSTAFFE: I understand.

THE COURT: -- as they say.

MR. ASPERGER: I'm assuming the door is open. Anything I say will open the door.

MR. WAGSTAFFE: This door opening is such a trial thing.

Your Honor, I have one thing. It's going to take 20 seconds. I just want to alert, your Honor.

THE COURT: Yes.

MR. WAGSTAFFE: The last question that was asked on cross examination of Ms. Model, I'm going to read the transcript and we're going to be seeking some relief from the Court because it violates its earlier in limine ruling.

I will bring that to your Honor's attention. We don't have the transcript, but when I get it tonight, I'm going to read it. I'm going to alert your Honor that that's not a small matter.

THE COURT: You're going to do what you're going to do.

MR. WAGSTAFFE: Thank you, your Honor.

THE COURT: Okay. Thank you.

(Whereupon at 12:29 p.m. proceedings were adjourned for noon recess.)

P R O C E E D I N G S

JANUARY 24, 2017 1:11 p.m.

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(Proceedings resumed pursuant to noon recess.)

(The following proceedings were held outside of the presence of the Jury)

THE CLERK: Come to order.

THE COURT: So we were discussing expert opinions. Any further comments?

MR. ASPERGER: Yeah. I'm doing my best, Your Honor, to focus on what he reported, what he did, why he did it. I mean, it's all pretty much fact testimony but it's -- but obviously he's doing certain things because he is an expert.

THE COURT: Well, what he did, that is not an issue. What he said to the Board of Directors, management, is not at issue. It is explaining anything behind that that he didn't tell the Board of Directors.

So for example, "I told them that this wasn't a books and records violation."

MR. ASPERGER: Right.

THE COURT: Okay, he can say that. The question is can he say "Because in my experience, blah, blah, blah, blah, blah," or "Because I know that blah, blah, blah, blah, blah." He can't say that, right?

MR. ASPERGER: Well, number one, I think he will say he explained to the board why. So I don't think it is going to be an issue. But number two, yeah I think he could say that because a lay witness could say: Why did you take certain action? I took certain action because --

THE COURT: That's not an issue about lay witnesses. You're just missing the point. The question is, when it's an expert, kind of, opinion and you get beyond just saying "I did this and I did this and I did this, and I told them that my opinion was this, and I told them my reason was this," can you explain anything that is in the nature of an expert opinion beyond that?

Not just -- it's not -- of course, you know: Why did you drive to school on Tuesday? Because it was a school day. A lay witness can say that. But that's not what this is. This is a person who is an expert giving what is ordinarily an expert opinion. And there's a limited question. The question is: Can they do that?

MR. ASPERGER: So let me give you an example, Your Honor, just in his methodology. What did he do in China. What did he do in Investigation One. He engaged Protiviti. They froze all of the documents. They did search terms. They did this.

THE COURT: These aren't opinions.

MR. ASPERGER: Right. And why did you do it?

Because I wanted to be through and was covering all of the issues and addressing all of the issues.

There will be numerous instances where it makes sense to explain why he's doing something, especially in light of the attack that the plaintiffs are making that his investigation missed things, that it didn't look at certain documents, that he didn't look at the sub-distributor issue, and then what happened when it was raised. Where it is both fair -- it is both fair fact testimony from an expert and it is fair response to what they are --

THE COURT: I don't understand why it's fair fact testimony. "I didn't look at that because under the Foreign Corrupt Practices Act, X, Y and Z." That's not fact testimony.

MR. ASPERGER: Well, he will say "I didn't look at it because nobody raised it with me, including Mr. Wadler."

THE COURT: Well, okay. That's nothing.

MR. WAGSTAFFE: Right.

MR. ASPERGER: Right. That's what he's going to say. What did he do in response? He thought it was a non-issue, and when he and Mr. Wadler looked at it, it was a non-issue.

THE COURT: Well, they looked at it, and told the Board of Directors it was a non-issue?

MR. ASPERGER: Yes.

THE COURT: Or told somebody it was a non-issue?

MR. ASPERGER: Yes.

THE COURT: Well, I'm still at the same place. As long as the predicate is: What did you tell someone, what did you do, okay, that is one thing. And I guess under certain circumstances, what others told you, depending on the circumstances. But what did you do, and, and what did you tell management or the Board of Directors, because that's relevant to any number of issues in the case, not the least of which is Mr. Schwartz's state of mind. Potentially Mr. Wadler's state of mind, I suppose. And to the reasonableness of his position.

But if you go beyond that and ask about things that were uncommunicated, whether they're reasons for things or they are in the nature -- reasons for things that are in the nature of an expert opinion, like: I didn't investigate this because under the Foreign Corrupt Practices Act that's not an important factor. Reasons that are not communicated that are in the nature of an expert opinion. Don't get into that, because I think that is excludable. So it is a hard line to draw.

MR. ASPERGER: It is.

THE COURT: It is a hard line to draw. But the way you draw it is by setting the foundation first for each of your steps.

MR. ASPERGER: I will do my very best, Your Honor. I understand what the Court is saying. And --

THE COURT: Good.

MR. ASPERGER: I may not be perfect, but whenever you sustain an objection --

THE COURT: You will know.

MR. ASPERGER: I'll know.

MR. WAGSTAFFE: Your Honor, I am concerned that they not ask the question, knowing they'll sustain an objection. I've been there. Your Honor is clear on the ruling. Seems to me it's simple, under 702 and Rule 26, both in terms of the disclosure of retained experts and unretained experts under the new rule as of two years ago, you have to have a report.

And therefore, if they ask a question he wouldn't know the answer -- he couldn't give the answer without his experience. Or he says "In my experience, asking distributors make no sense," that's an opinion.

THE COURT: Well, he's not going say "In my experience" unless he says "I told the Board of Directors in my experience," et cetera. But I've got to tell you the line is not quite as clear as would you like it to be.

But I think that the way to make sure that you don't straddle the line is to set up the foundation for each of the things you want him to say about what he did.

MR. WAGSTAFFE: (Nods head)

THE COURT: At least about what his reasoning or his opinions are as to what he did, then its effect, that is not an opinion. But reasoning, et cetera, that is. And so that's problematic.

MR. WAGSTAFFE: Thank you, Your Honor.

THE COURT: Okay. So let's get the jury.

(The following proceedings were held in the presence of the

Jury)

THE COURT: Okay, thank you very much, ladies and gentlemen. Welcome back.

All right, defense can call their first witness.

MR. ASPERGER: Your Honor, and ladies and gentlemen, the defense calls Patrick Norton.

MR. LANDES: May I approach?

THE COURT: Please.

PATRICK MICHAEL NORTON, DEFENDANTS' WITNESS, SWORN

THE WITNESS: I do.

THE CLERK: Thank you. Please have a seat and make yourself comfortable. Make sure you speak clearly into the microphone for our court reporter.

Please state your full name for the record and spell your last name.

THE WITNESS: Patrick Michael Norton, N-O-R-T-O-N.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. ASPERGER

Q Good afternoon, Mr. Norton. What is your current job?

A I am currently retired from my last law firm. But I act as an independent arbitrator on a case-by-case basis.

Q How long have you been acting as an independent arbitrator?

A Since the end of 2014, two years.

Q Did you previously work as a partner in private practice?

A Yes, I did.
Q Was one of your specialties the Foreign Corrupt Practices Act?
A Yes, it was.
Q Would you describe for the jury, please, generally what did you do in this field?
A There were two kinds of work in this regard. One was advising companies on how to comply with this act, how to set up policies and programs and contracts so that they would be in compliance with the statute's requirements.
The other was to investigate situations where companies were accused of or had, themselves, identified various facts that led them to believe that they might have violated the Act. And to advise them on what to do about that.
Q When you were advising law firms on these issues, what firms did you work at?
THE COURT: Do you want to rephrase that?
BY MR. ASPERGER
Q I'm sorry. When you were advising companies on these issues, what law firms did you work at?
A I did limited work when I was a junior associate at a law firm called Covington and Burling in Washington. That was a long time ago. When I was just starting as an associate and very shortly after the law was enacted.
I was later a partner at Alston & Bird, which is a law firm

headquartered in Atlanta, Georgia; O'Melveny and Myers, which is a firm headquartered in Los Angeles; and Steptoe & Johnson, which is a firm headquartered in Washington, D.C.

Q During what time period were you giving this advice as a partner at law firms?

A The area became much more active after about 2000. And so during the entire time I was at O'Melveny and Myers, which was from 1999 to 2006. And when I was a partner at Steptoe & Johnson, which was from 2006 until the end of 2014, FCPA advice was a regular part of my practice. Probably, on average, was 40 or 50 percent of that practice.

Q Approximately how many internal corporate and government investigations have you handled?

A I would say somewhere, somewhere between 15 and 25. Depends on how you count, actually. So, repeat investigations for the same company might -- you could count as one or two investigations. Something on that order.

Q About how many of them involved the Foreign Corrupt Practices Act?

A They all involved the Foreign Corrupt Practices Act.

Q Was there a period of time when you were practicing law at a law firm and giving this advice that you lived in China?

A From early 1999 until I left China in 2005, a good part of my practice was FCPA advice and investigations.

Q Approximately how many FCPA investigations did you work on relating to China?

A Well, it would have been a majority of them that related to China either entirely or as part of a much broader worldwide investigation where China was a significant part of the investigation. And I think there must have been 15 to 20, large and small.

Q Is one of the examples of the types of companies you worked for a company called Diagnostic Products Corporation?

A Yes. I conducted an investigation for that company.

Q And would you explain briefly what that involved?

A I think it started in about 2003. Diagnostic Products was a company headquartered in Los Angeles, I believe, that was listed on one of the U.S. stock exchanges. And they had a subsidiary in Tianjin, China. Close to Beijing.

And at one point they determined that somebody in -- somebody in their headquarters determined after an audit that they may be paying kickbacks on their sales of medical products to their customers in China. So they engaged me to investigate that.

It turned out that in fact, they were paying regular kickbacks on their sales. That matter was investigated, reported to the Department of Justice, and the Securities and Exchange Commission. The SEC. And the company resolved the case by pleading guilty to criminal violations of the act. It was fined -- I can't remember the exact number. Maybe

$10 million, something like that.

Q Have you also done a number of other investigations in the medical and pharmaceutical field?

MR. LABAR: Objection, Your Honor, relevance.

THE COURT: Well, let's not go too far down this road, but you can answer that question.

THE WITNESS: Yeah, I would say about half of my investigations in China involved either medical equipment manufacturers or pharmaceutical manufacturers.

BY MR. ASPERGER

Q Did you also advise a committee of the Chamber of Commerce in China on the Foreign Corrupt Practices Act?

MR. LABAR: Objection, Your Honor, relevance.

THE COURT: Yeah, so let's -- let's move on to another subject, please.

MR. ASPERGER: Okay.

BY MR. ASPERGER

Q From 1975 to '77, did you work for the United States State Department?

A Yes.

Q What were your responsibilities there?

A I was right out of law school. I was the junior attorney in the part of the legal office that dealt with East Asia.

Q And in that capacity, did you also participate in meetings that were related to the enactment of the Foreign Corrupt

Practices Act?

MR. LABAR: Objection, Your Honor, relevance.

THE COURT: Sustained. This is not an expert witness. I want you to go ahead and give what background is relevant to the subject, but I want you to continue.

BY MR. ASPERGER

Q What is your educational background, Mr. Norton?

A I have a B.A. from the University of Pennsylvania, B. Phil from Oxford University, and a J.D. from Harvard Law School.

Q And did you also study Chinese?

A Yes. I had four years of Chinese while I was an undergraduate.

Q And are you fluent in Chinese?

A Fluence is a relative term. I think it would be fair to say that I was and may still be functionally fluent. I get around a lot of areas. I'm certainly not fluent on a level of a native Chinese or someone who is fully bilingual.

Q Did there come a time when you were hired by Bio-Rad to conduct an internal investigation?

A Yes.

Q Approximately when was that?

A We were engaged in January of 2010. There may have been one or two preliminary calls in late December, but I'm not sure.

Q And in connection with that investigation, who did you report to?

A Mr. Wadler, the general counsel of Bio-Rad. Bio-Rad engaged us on behalf of the company.

Q And did that investigation last from approximately early 2010 through the end of 2011?

A No. That engagement lasted through the end of April, at which point the company's Board of Directors decided to conduct an independent investigation under the direction of the board's Audit Committee. And the Board of Directors then engaged us directly. And our engagement by the management terminated.

Q And why was it changed to the Audit Committee?

A One of the issues in every FCPA investigation is whether management might have been involved in any violations of the statute. So when they want to conduct -- the government expects you to conduct an independent investigation --

THE COURT: So, stop. This is beyond the scope of what I said you could do. And obviously the witness doesn't know this. So ask a question that lays a proper foundation, please.

BY MR. ASPERGER

Q You can just answer this question yes or no. Did you explain to the company why you moved to an Audit Committee investigation, and did they do that based upon your advice?

A Yes.

Q And did you continue to discuss issues with management while you were representing the Audit Committee?

A Yes.

Q Why?

A Well, if you are conducting an investigation of a company --

MR. LABAR: Objection, Your Honor.

THE COURT: Yes. Sustained.

BY MR. ASPERGER

Q So the question was: Did you continue to discuss issues with management?

A Some issues. Not all -- not all issues.

Q What type of issues?

A We needed the assistance of management to obtain copies of documents and to arrange access to email records, and to arrange interviews with employees.

In the other direction, we needed to inform management of issues that might come up that would be helpful to them in conducting their business, and would involve -- would avoid violating the statute, going forward.

Q And would you explain for the jury, please, what the overall scope of your investigation was and what you did to conduct that investigation?

MR. LABAR: Objection, Your Honor, overbroad. Calls for a narrative.

THE COURT: Well, let's take it a step at a time. Do the first question first.

BY MR. ASPERGER

Q So first describe for the jury, please, the scope of the

investigation you conducted during this two-year time period.
A The initial investigation at the -- when we were engaged by the company was limited to an internal investigation concerning their sales in five countries.
Q So let's fast-forward. Just, the overall scope was what, Mr. Norton?
A When the company -- when the Audit Committee engaged us, the scope was to investigate the company's sales worldwide, to determine if there were any violations.
Q And when you expanded and conducted this overall scope, what did you actually do to conduct your investigation?
A Well, first we structured a plan for how to go about that. The company had sales in more than a hundred countries. You couldn't do them all at the same time. So we identified what we considered the highest-risk companies -- countries, rather. And a second group of companies that would probably merit investigation later.
We went to the government authorities to tell them what our plans were, to see if they had any objections or any suggestions to do other things or different things.
Q Did you secure electronic documents?
A Yes.
Q What did you do to secure electronic documents?
A We worked with company officers who were in charge of the company's information technology work. The company had a number

of different servers in different locations. And we had to be sure, first of all, that nothing was erased. And secondly, we provided them with electronic search terms to see if we could identify any information that would be potentially relevant to the investigation.

Q And in doing so, did you search millions of documents?

A Yes. I don't recall exactly how many, but it was certainly over 10 million documents that were identified by the electronic search from much larger sets of documents. And the ones that were identified by the search terms were then reviewed by hand in several different languages by associates in my office.

Q Approximately how many were reviewed by hand?

A Total, I'm not sure. I know for China it was on the order of perhaps 15,000 documents. Most of them in English. But some of them in Chinese.

Q So, a couple more questions more generally, and then let's turn to China. Did you also conduct interviews worldwide?

A Yes. Over the two years.

Q And did you engage a company called Protiviti?

A Yes. Protiviti is a forensic accounting firm. That is, accountants who are experts in reviewing company books for evidence of particular kinds of violations of the law.

Q Did you work closely with Protiviti over the course of the investigation?

A We worked closely with them on essentially a daily basis.

Sometimes we visited foreign locations together with them. And we discussed what they were finding, what they would like us to look for. And that kind of thing. They're an integral part of the investigation.

Q And approximately how many countries did you look at worldwide?

A I think we looked at sales in 20-some countries, low 20s.

Q During the course of that two-year investigation, did you frequently communicate with the Department of Justice and the SEC?

A Right at the beginning of the investigation, at the direction of the Board of Directors, we disclosed to the Justice Department and the SEC that we were conducting this investigation. And part of that process was a commitment on the company's part with the direction of the Board of Directors to cooperate fully with the government in investigating these same issues.

And to -- to provide that cooperation, we talked to them frequently. Periodically, in meetings that were person to person. In between those meetings, by telephone calls, tell them what we had been up to and what we were planning on doing next.

Q Now, directing your attention to China, how long were you in China during this first investigation?

A Actually on the ground in China, I would say -- I think I made perhaps three visits to China for a total of no more than 12, 14 days. Also, a few days at Hong Kong, which technically is a part of China, but works a little differently there.

Q Mr. Norton, would you look at Exhibit 36, please.

(Document displayed)

(Request complied with by the Witness)

A Okay.

Q Is 36 a PowerPoint which was your final presentation to the government on January 4th, 2012?

A Yes, it is.

MR. ASPERGER: We move that into evidence Your Honor.

MR. LABAR: No objection, Your Honor.

THE COURT: It is admitted.

(Trial Exhibit 36 received in evidence.)

BY MR. ASPERGER

Q I want to direct your attention to Page 17, Slide 33.

(Document displayed)

Q Does Slide 33 describe your investigation procedures in China?

A Yes, it does.

Q And it says you reviewed documents of 31 custodians?

A That's correct.

Q And you searched documents, you searched over 465,000 documents, and then reviewed approximately 16,000. Right?

A Yes.

Q And then Protiviti was separately reviewing the books and records, is that correct?
A That's correct.
Q And what did they do in Shanghai and Hong Kong?
A They had a team of accountants that worked on this particular project. They were located primarily in Hong Kong. Most of them, I think three out of four, were ethnically Chinese, and spoke and read and write Chinese on a native basis. There was also an American guy.
I think they spent about two weeks on the books in Hong Kong. And then they went to Shanghai and spent perhaps two weeks there, going through the books and reporting back and forth to us as to what they were finding, and asking if we had different suggestions as to what they might be looking for.
Q And were you working closely with Protiviti at this time?
A We worked very closely throughout the entire investigation with them.
Q In China, it says, you conducted approximately 16 witness interviews?
A That's correct.
Q And sometimes you went back two or three times to the witnesses. Correct?
A That's correct. I conducted the majority of those interviews. Some of those interviews were conducted by my partner in Beijing.

Q And that included regional and country sales and marketing management, sales staff, and finance personnel. Correct?

A Yes.

Q Did you report -- did you report the conclusions of your investigation in China to the Audit Committee, the Board of Directors, and the government?

A Yes.

Q Was one of the issues you looked at missing documents?

A Yes.

Q What did you report to the Bio-Rad Board of Directors and to the government on this?

MR. LABAR: Objection, Your Honor, vague as to time.

THE COURT: Why don't you lay a foundation, please.

BY MR. ASPERGER

Q You made your final report to the Bio-Rad Board of Directors in late 2011, correct?

A I believe it was in September of that year.

Q And then you made a subsequent report to the government on January 4th, 2012?

A Yeah, that's the document we're looking at here.

Q So what did you report to both the Board of Directors and the government on missing documents?

MR. LABAR: Objection, overbroad.

THE COURT: Overruled.

THE WITNESS: There was a significant documentary problem with sales in the early part of -- for the early part of the period of our investigation. We were investigating documents from 2005 into early 2010. And the company's records for sales in the early part of that period. That is, 2005, -6, -7, maybe part of 2008, were in very poor condition. The Protiviti people had great difficulty in identifying documents and reconciling them, and coming to any meaningful conclusions.

After that point, where there was a major management change in the Bio-Rad China operations, the records improved considerably, and on the whole, were very good.

Q Did you also look at issues relating to discrepancies in documents during this investigation?

A Yes. We, ourselves, looked at a great many documents. "Ourselves" being me and my associates working with me.

Q And what did you report to the Board of Directors and the government on this issue?

A We had identified a particular concern in our findings, which was discrepancies in the documents, and very high commissions that were being paid to agents on some sales.

(Document taken off display)

A And we, together with the accountants, looked very closely at the documents to see if we could explain those discrepancies. In I would say 75 percent of the transactions we looked at this way, we found explanations.

At the end of the day, there was still another 25 percent of the documents, maybe, I guess, 50 transactions, where there were unusually high commissions being paid. And we couldn't find documents that explained why. And we told the government that.

Q Separate and apart from the commissions, did you also look at document product descriptions, and reach any conclusions on those issues?

A Well, there were several kinds of discrepancies in the documents that we looked at. And it took some work to be sure we understood those properly, and, and could explain why they were legitimate or not legitimate, the way they had been handled. So there were several different kinds of issues. I can identify those if you want.

Q If you could identify those, and then explain how they were resolved, I would appreciate it.

MR. LABAR: Objection, Your Honor. Calls for a narrative, overbroad, compound.

THE COURT: So, would you lay a foundation, please?

BY MR. ASPERGER

Q So let's look at product descriptions. Did you look at the issue of product descriptions, and whether there might be products described as two items in one piece of documentation, and six in another?

A Yes.

Q What were the -- what were your conclusions on that?

MR. LABAR: Objection, Your Honor. Overbroad, and opinion.

THE COURT: Yeah. Lay a foundation, please.

BY MR. ASPERGER

Q Did you offer explanations to the Audit Committee and the government on that?

A Yes.

Q What did you report to them?

A So in particular transactions, some of the documents would describe the products being brought as categorized by Bio-Rad catalog numbers. Product numbers. And there might be five or six numbers. In other documents in the same transaction, they were categorized by Chinese import categories, which were usually not as specific. So you might see, as you say, two documents in -- that were reporting the products based on the import categories, and other documents that describe six products. But in fact, they were the same thing. The price -- total price was always the same. It was just a question of how they were being listed. I think -- you could think of it in terms of --

MR. LABAR: Objection, Your Honor.

THE COURT: Yeah. Let's not do a narrative.

BY MR. ASPERGER

Q So, bottom line, Mr. Norton, when you found these types of discrepancies and you identified the explanations that you gave to the jury, did these raise any FCPA concerns?

A No.

Q Did you report that to the Board of Directors?
A Yes.
Q Did you also look at issues of potential extra products?
A Yes.
Q And did you report the results of your examination of that issue to the Audit Committee and the government?
A Yes.
Q And to the Board of Directors?
A Yes.
Q And what did you report?
A Well, there were two different issues. One is, as we just talked about, the different categorizations. And where that was the case, there were no extra products. They were the same products.
There were a relatively small number of documents in which the final documents showed additional free products being sent in -- being added to the shipment. And in those cases, pretty much invariably, it was a small number of relatively low-priced products that had been tacked on to make the customer happy. That was -- it seemed quite evident in those cases.
Q Did you report whether or not those raised corruption issues?
MR. LABAR: Objection, vague as to time.
THE COURT: Overruled.
THE WITNESS: Yes. We said that these did not appear to

demonstrate any sort of corruption issues.

BY MR. ASPERGER

Q Now, would you look at Slide 36, which is on Bio-Rad 2401, please.

(Document displayed)

Q I'm sorry.

A I'm --

Q That's --

A 36 --

MR. ASPERGER: Go back. That's slide 38. Go back to Slide 36.

THE WITNESS: 36 is on -- okay, 2401. Right.

(Document displayed)

BY MR. ASPERGER

Q Right. This is from the PowerPoint you gave to the government, isn't that correct?

A Yes.

Q And does this report your bottom-line conclusions?

A Yes.

Q Did you find any evidence of improper payments, or intention to make improper payments?

A No.

Q What do you mean by that, and what did you explain to the government on that issue? And to the board and the Audit Committee. I assume you explained the same thing to all three;

correct?

A Yes.

Q So what did you explain to the government, the Audit Committee, and the Board of Directors?

A Well, we took -- told them we had looked long and hard at the relevant documentary evidence, and people we'd interviewed. And although there were -- there were problems, as I said, the biggest problem was some high commissions that we couldn't explain. But we could find no evidence that anyone made an improper payment to a government official. I mean, that's the issue here, the FCPA. Did somebody pay a government official.

MR. LABAR: Objection, Your Honor.

THE COURT: Just go ahead. Finish your answer.

THE WITNESS: Um, no evidence of that. We found no intention of anyone making a payment to the government.

BY MR. ASPERGER

Q Did you report to the Audit Committee, Board of Directors and the government, that there were, nonetheless, red flags?

A Yes.

Q What are red flags? And what did you report?

A Red flags are facts or circumstances that indicate that there's a high risk of corruption. And there were several different red flags in this case, right from the beginning.

One, that it was China. I mean, China is known to -- admits to having a very corrupt culture. One was that this was the medical equipment business in China, which is -- is known as a particularly corrupt area. And the other was the inability to reconcile some of these earlier transactions. All of these were things that made you pay attention.

Q Did you recommend that Bio-Rad implement mediation -- remediation measures to address the risks in China?

A Yes.

Q Look at Slide 38, please, which should be the next page.

(Document displayed)

(Request complied with by the Witness)

A Okay.

Q Are these the remediation measures that you recommended?

A Yes.

Q Would you briefly describe those to the jury.

A Well, we concluded that some of the problems in the sales, particularly sales of their Life Sciences group, were structured in a way that they were riskier than otherwise. And that it would be better if they tried to change the model. If they restructured who was buying what from whom, and who was acting as an agent, and that kind of thing.

We recommended that they have better drafted agreements with some of their dealers, some of their distributors in China. To put in appropriate safeguards.

And then we understood that the financial folks would put in stricter financial controls, although that really wasn't our job as lawyers.

Q What was your experience with Mr. Wadler during this first investigation in 2010 and 2011.

(Document taken off display)

A I found him remarkably unengaged in the process. In the early part of the investigation, we really saw and heard very little from him directly. Which, in my experience, an investigation of this magnitude, is very unusual.

THE COURT: So don't -- don't --

MR. LABAR: Objection, Your Honor.

THE COURT: So, do you need me to take a moment so you can talk to your witness? I don't want him to go into things that he's not allowed to go into.

MR. ASPERGER: Yeah. That would be good, Your Honor.

THE COURT: All right. Just, that would be good?

MR. ASPERGER: Yes.

THE COURT: Oh, good. All right. So we are going to take a ten-minute break, just because we have got rules of evidence, ladies and gentlemen. I'm just trying to make sure everybody follows them. They're quite complicated and very difficult. I want to make sure everyone is on the same page.

So I'm sorry to take such a quick break on you, but enjoy yourself for ten minutes, and we'll have you back.

(Jury excused)

(The following proceedings were held outside of the presence of the Jury)

THE COURT: So, just, just to be clear -- and I'll say this in front of the witness, so that he knows: You are here as a percipient witness. And the Court has ruled that you can -- but you are a lawyer, and you are an expert in these areas. And so that straddles a line that we have to be careful with.

And what I have ruled is that you can testify, under appropriate questioning by counsel, as to what you told management or the Board of Directors of the Audit Committee. And that can include the advice you gave them on ultimate conclusions, and it can include reasoning that you gave them for your ultimate conclusions.

Testifying behind that as to what things -- as to what things in your experience or your knowledge might lead you to those conclusions, you cannot testify to, unless they were actually told to the Board of Directors. So that's -- it is really a communication.

You can also testify as to facts. That is to say, you know, how many documents you reviewed, or how many witnesses, and where you traveled. And that sort of thing. But when we get into the questions that are more about the opinions that you rendered, we've restricted it to the communications. What was communicated.

THE WITNESS: Okay.

THE COURT: So maybe you can talk with counsel briefly.

MR. ASPERGER: I think we can fix it. I didn't have a chance to talk with him before.

THE COURT: Got it. Not a problem. So we will take a few minutes, and then we will go back on the Record. So, in recess.

(Recess taken from 1:53 p.m. to 1:59 p.m.)

(The following proceedings were held outside of the presence of the Jury)

THE COURT: All right. Remain as you are.

Okay. Are we all squared away?

MR. ASPERGER: We should be, Your Honor.

THE COURT: Thank you. Let's get the jury.

(The following proceedings were held in the presence of the Jury)

THE COURT: All right, thank you for that opportunity, ladies and gentlemen, to clarify things so that we can get things in efficiently and take up as little of your time as we have to.

Please proceed.

BY MR. ASPERGER

Q Mr. Norton, during this first investigation, during the two-year period, did you have difficulties with Mr. Wadler?

A Yes.

Q Did you report those difficulties to Lou Drapeau and the Audit Committee?

A Yes. I reported them in writing, at least twice. And orally by telephone on other occasions, I think.

Q What was the substance of what you reported about Mr. Wadler?

A We were under instructions from the Audit Committee to do the investigation right, and to do it as quickly as possible. And Mr. Wadler was not cooperating with -- with those efforts. There were very delayed responses to requests for interviews or requests for documents or the like. And it was impeding the investigation.

Q And you said before the break that he was "remarkably unengaged." I believe those were your words.

A Yes.

Q And did you report that to the Audit Committee as well?

A Yes, I did.

Q What did you report to the Audit Committee on that?

A I reported that I was very surprised that he was not personally more involved in dealing with us on getting the investigation under way and moving along.

Q Did you tell the Audit Committee why?

A Well, I didn't know exactly why he was so unengaged. I told them --

Q Excuse me. Let me rephrase. Did you explain to the Audit Committee why that was of concern, and why it was a surprise?

A This investigation was a big deal for the company. It risked --

MR. LABAR: Objection, Your Honor. Opinion.

THE COURT: So --

THE WITNESS: That is what I told them.

THE COURT: Okay, go ahead. Then proceed.

THE WITNESS: I told them it was a big deal for the company. As far as we could tell, there was a serious risk of criminal or administrative penalties. And I expected a general counsel to be more personally involved in a matter like that.

BY MR. ASPERGER

Q In approximately December, 2010, December, 2010, did you interview Mr. Wadler?

A Yes.

Q What did he tell you that was of importance?

A Mr. Wadler told me that until quite recently, he had been largely uninformed about the FCPA.

Q Did he tell you about whether he had taken any steps to protect the company with respect to FCPA risks?

A He admitted that he had taken very few measures to deal with the risks. And he -- I'm quite sure he said at one point that he thought maybe these problems were, at least in part, attributable to his failure to do that.

Q Did he tell you about -- did he say anything about his knowledge of the FCPA?

A He said that again, until quite recently, he knew very little about it. When I asked him about the widespread coverage of these issues in the news and whatever, he said he really hadn't seen much information like that.

Q What did he tell you about whether the company should have had an FCPA policy in place?

A He said something to the effect of: I guess or I think we should have had an FCPA policy in place all along.

Q Did he tell you whose responsibility he thought that was?

A He said that was his responsibility.

Q Did you report the results of your interview to the Audit Committee and the Board of Directors?

A Yes, I did.

Q What did you tell them about the interview?

A I told them that I was shocked that a general counsel of a public company like this admitted he knew very little about one of the main laws of the company he had to comply with.

Q Did you later tell the Board of Directors that you recommended Mr. Wadler be terminated?

A Yes. At the end of our investigation.

Q Was that at the board meeting in approximately September, 2011?

A Yes.

Q Did you explain to the Board of Directors why?

A I said two things. One --

Q Before you get into that, answer my question, if you explained that to the Board of Directors.

A Yes.

Q Did you also have separate conversations, both with Mr. Wadler and with certain members of management and the Board of Directors, about this issue?

A Yes.

Q So now let's break those apart. With respect to the Board of Directors, prior to the meeting, which members of the Board of Directors did you speak with or which member?

A I spoke to the chairman of the Audit Committee.

Q Lou Drapeau?

A Mr. Drapeau, yes.

Q Was Mr. Schwartz in that meeting?

A Mr. Schwartz was in one meeting with Mr. Drapeau and myself. I had other discussions with Mr. Drapeau about this issue.

Q So let's break that apart. What were the discussions you had with Mr. Drapeau, one on one?

MR. LABAR: Objection, Your Honor. Vague as to time.

THE COURT: Overruled.

BY MR. ASPERGER

Q Just to be clear, this is roughly the September, 2011, time of the board meeting, right?

A Yes.

Q Let's start with Mr. Drapeau. What were your conversations with Mr. Drapeau about Mr. Wadler?

A I told Mr. Drapeau that by his own admission, Mr. Wadler had not performed his responsibilities to the company on this issue of compliance with the FCPA. And I told him further that I thought that the government would be -- would find it very troubling that the company kept in place when it was trying to clean up its act, so to speak, the person who had been in charge of this issue for 25 years or something, and had done nothing about it in the past. So I -- I thought it would be much harder to resolve this case with the government if Mr. Wadler remained in his position.

Q What was Mr. Drapeau's response?

A Mr. Drapeau told me that he had previously recommended to Mr. Schwartz, and I think to other members of the Board of Directors, that Mr. Wadler be terminated.

Q Now, let's move to your conversation with Mr. Drapeau and Mr. Schwartz. Was that in the same period of the board meeting in approximately September, 2011?

A I think it was the day before.

Q What was discussed about Mr. Wadler in your meeting with Mr. Drapeau and Mr. Schwartz?

A Essentially the same things. My reasons for thinking why the company had to terminate him, somehow. And Mr. Drapeau repeating that he had recommended this previously, for other reasons.

Q What was Mr. Schwartz's response?

A Mr. Schwartz was, as I recall, noncommittal at the point.

He listened to the discussion, but I don't think he recommended going one way or the other.

Q Did he express concern?

A Well, he certainly expressed concern that counsel he'd hired for this investigation was making this recommendation, yes.

Q Now let's move to your meeting with Mr. Wadler.

A Yes.

Q When was that?

A That was late in the afternoon or early in the evening of the day before the board meeting.

Q Did you discuss with him, with Mr. Wadler, your recommendation that you were going to terminate him -- I'm sorry, to recommend that you terminate him?

A Yes. I informed him of that recommendation, and I expressed the same reasoning.

Q Before we get into the substance, are you absolutely certain you had this discussion with Mr. Wadler, and explained to him that you were going to recommend his termination?

A I am absolutely positive I had this discussion in his office, late that afternoon.

Q Now, would you describe for the jury, please, that conversation.

A I told him that I thought he should know that this was a recommendation I was going to make. And I gave him the same reasons that I had given to Mr. Drapeau and others.

Q What was his response?

A He was largely noncommittal as well. He didn't argue with me. He -- I thought he seemed rather taken aback. Which wasn't surprising. And I told him I needed -- he should know about this in advance of the meeting, if he wanted to take any action to defend himself.

Q Had you ever recommended the termination of a general counsel before in your career?

MR. LABAR: Objection, Your Honor. Relevance.

THE COURT: Sustained.

BY MR. ASPERGER

Q Did you explain to the Board of Directors or Mr. Drapeau whether or not you had ever recommended the termination of a general counsel ever before in your career?

A No. I don't recall that issue coming up.

Q Did you explain to Mr. Drapeau or the Board of Directors whether this case was different from other cases you had handled in the past?

MR. LABAR: Objection, Your Honor, relevance.

THE COURT: Well, it's -- let's get an answer to that, and then we can see.

BY MR. ASPERGER

Q With respect to the recommendation of Mr. Wadler. Let me focus it a little more.

THE COURT: He already said the subject didn't come up.

Next question. Move on.

MR. ASPERGER: No, that was very -- a different question. Did he explain why this case was different.

THE COURT: The answer is the same, though.

BY MR. ASPERGER

Q You don't recall?

A I don't recall the issue coming up.

Q So Mr. Norton, one other question. Did you include a slide in your Board of Directors presentation recommending the termination of Mr. Wadler?

A No.

Q Why not?

A Because I thought it was a sensitive issue, reflecting on Mr. Wadler. If the company decided to keep him against my recommendation, which it was free to do, I didn't think it was useful to have that in a written form.

Q Did you tell the government that you recommended Mr. Wadler's termination?

A No.

Q Why not?

A Because it was a decision that the company had to make as to whether they wanted to follow my recommendation or not. And that wasn't something about the investigation that -- that I thought the government needed to know.

Told them all the facts of the investigation, everything we had found. But I did not think that we were obligated to or that it was appropriate to tell the government that I had recommended he be terminated, in case they decided to retain him.

Q So I would now like to direct your attention to Exhibit 22. Would you take a look at Exhibit 22?

(Document displayed)

MR. ASPERGER: I believe it is already in evidence, Your Honor.

THE COURT: Karen?

MR. ASPERGER: Oh, if it isn't, then would you identify it?

MR. WAGSTAFFE: Your Honor, I'll note for the record.

THE CLERK: It was.

MR. WAGSTAFFE: I put it in evidence during my examination.

THE COURT: Okay. Good. Thank you.

Go ahead.

BY MR. ASPERGER

Q Okay. Is Exhibit 22 the company's ethics policy that was in place before you conducted your investigation?

A I believe so.

Q I would like to direct your attention to Bates 32932 through -33.

(Document displayed)

Q And do you see Section 3.5, and 3.5.1?

A Yes.

Q Is the company's policy of giving no gratuities set forth in Section 3.5?

A I believe so.

Q And is that explained in more detail in Section 3.5.1?

A Yes.

Q Did you explain to the Board of Directors and Mr. Drapeau why this policy was inadequate?

MR. LABAR: Objection, Your Honor, opinion.

THE COURT: Overruled.

THE WITNESS: Yes. I believe I said that it was fine as far as it went, but it didn't go nearly far enough.

BY MR. ASPERGER

Q Did you explain to them what else needed to be put in place, and why this was inadequate?

A Yes.

Q What did you tell them?

A Told them that it was now best practices at companies and it was an expectation of the government that publicly-listed companies like Bio-Rad have a detailed policy that explained how they expected their employees to handle relations with the government. Circumstances under which payments were actually not allowed. What they should do in various circumstances. They should have accompanying documents on how to deal with third parties or government contracts. Details on entertainment policy. They should have regular training programs at which they talk to the people, talk to their foreign employees, and told them: This is what we expect of you.

None of that was here.

BY MR. ASPERGER

Q Did you explain to the Board of Directors why having those additional requirements were so important?

A Yes.

Q What did you tell them about why those additional requirements were so important?

A Well, first of all, as a -- two sides of it. One, only that way could you -- not guarantee, but certainly enhance the chances that your employees would do the right thing. And secondly, it was important because we were going to need to explain to the government what kind of compliance policies they had in place. And these were plainly inadequate.

Q Did you also explain to the Board of Directors and the Audit Committee why there were circumstances that could arise that might not be obvious to employees in the field?

A Yes. To the extent that these were very general directions, but in the field there could be all kinds of situations that arose where the proper way to handle the issue was not evident on the face of these -- these documents.

Q And in fact, Mr. Norton, in your investigation, did you conduct interviews in which this proved to be the case at Bio-Rad?

A Yes.

Q Did you explain the results of those interviews to the Board of Directors, and how it related to having a policy that was not inadequate like this one?

A I told the Audit Committee that on repeated occasions in my interviews with foreign employees, they had complained. That they'd had no direction on how to specifically handle particular situations. They had no training.

And that where we were clearly identifying problems, they argued -- maybe in their self-interest, at least in part, but they argued that if they had been properly trained, they would not have engaged in objectionable conduct.

Q And did you give the Board of Directors and the Audit Committee examples of this?

A Um --

Q Resulting from your interviews?

A I'm trying to remember.

Well, one particular example that I reported to them in detail was that one of the divisions of the sales department of the company had engaged in particularly troublesome transactions. Transactions that were the direct basis for a large part of the fines the company paid.

And the financial officer in that division who had handled the payments, made arrangements for them, made sure that they got paid to the wrong people, argued very strenuously that she would not have handled matters that way if she'd ever had any training on these issues.

Q How did Bio-Rad's inadequate policy hurt the company and its shareholders?

MR. LABAR: Objection, Your Honor. Relevancy.

THE COURT: Sustained.

BY MR. ASPERGER

Q Did you talk to the Board of Directors about how this inadequate policy hurt the company and the shareholders?

MR. LABAR: Same objection, Your Honor.

THE COURT: I'm not sure how far you're going to go down this road, but you can go a little bit.

MR. ASPERGER: I was just going to ask that question.

THE COURT: Go ahead.

MR. ASPERGER: If he says yes, I'll ask him what he explained.

THE COURT: Go ahead.

THE WITNESS: Well, I explained to the Audit Committee that I thought a lot of the problems that were about to result in fines for the company were the result of not having an appropriate compliance policy and program in place.

Q. So, Mr. Norton, now let's shift gears and move to 2013. How did you first learn that Mr. Wadler was raising issues in 2013?

A. By that time I was living in London and I received a telephone call from two partners at Davis Polk at home -- I was at home -- late one Friday night. And they informed me that Mr. Wadler had been in their offices most of the afternoon and had engaged them to investigate some of the FCPA issues.

Q. Was one of those partners Martine Baemon?

A. Yes.

Q. Was Davis Polk, to your knowledge, retained to represent the Audit Committee at that point in time?

A. I'm not sure exactly what time they were engaged, to be honest.

Q. Did you discuss next steps with Davis Polk at this point in time in this call?

MR. LABAR: Objection, your Honor. Hearsay.

THE COURT: Sustained.

BY MR. ASPERGER

Q. Okay. What actions did you take as a result of this call?

A. That was a Friday night. And over the course of the next week, I had a series of communications with Davis Polk again, with the Audit Committee, and with my own partners who had worked on the earlier part of our investigation trying to clarify what exactly Mr. Wadler was alleging and trying to identify with them how we could be helpful in resolving these, the issues that he had raised.

Q. Based upon your calls over that week, what was your understanding of the issues you were supposed to investigate at that point in time?

A. My first understanding was nobody was quite sure exactly what he was alleging. The allegations were quite vague.

Insofar as we could understand what he was alleging, there seemed to be three things.

One, that he was trying to get documents in connection with a different investigation, an investigation of royalty payments that were due to another company. And in the course of that, he hadn't been able to get those documents and he thought that the -- the inability to get those documents raised suspicions about how the company -- the company in China was conducting its business.

Secondly, he was claiming that there were discrepancies between some of the documents in particular transactions. And in the course of this week or so, he emailed my office all of the transactional documents on 166 transactions.

Q. Pause right there for a minute, Mr. Norton. Were these issues you had previously investigated in your first investigation?

A. They were -- the discrepancy issues were a key part of our first investigation. We had looked at hundreds of transactions involving what I understood to be the kinds of discrepancies that he was raising.

Q. Okay. What was the third issue that you understood you were to look at?

A. And the third issue was that he was -- he understood that their distributors in China, the local Chinese distribution companies, had signed new distributor agreements and they had signed inconsistent Chinese and English texts. And he thought that was an indication of some sort of problem.

Q. So just to frame the time here, you said your initial call from Davis Polk was on a Friday night, correct?

A. That's correct.

Q. And was that roughly February 15th?

A. I think it was exactly February 15th.

Q. And then you had a series of calls over the next week where you gained the understanding of the issues that you just described for the jury, right?

A. Yes.

Q. Now, I want to take you back to January 31st. Would you look at Exhibit 109, please?

(Witness complied.)

Q. You recognize Exhibit 109? If you look at the bottom of the page, that's the email that you're on, correct?

A. That's correct.

Q. And is that an email from you to Ernst and Young with a copy to your partner Tom Best?

A. That's correct.

MR. ASPERGER: I would move that into evidence, your Honor.

THE COURT: Any objection?

MR. LABAR: No objection.

THE COURT: Okay. It's admitted.

(Trial Exhibit 109 received in evidence)

(Document displayed)

BY MR. ASPERGER

Q. So this is an email where you're informing Ernst and Young that Sandy Wadler has contacted you, correct?

A. Yes.

Q. And it says:

"Sandy Wadler informs me that Ernst and Young would like to discuss Bio-Rad's pending FCPA investigation with me or someone else at Steptoe and Johnson."

Do you see that?

A. Yes.

Q. At the time that Mr. Wadler had contacted you, did he express any concerns to you about the FCPA relating to China at this point in time?

A. I'm not sure exactly which -- which discussion with Mr. Wadler I'm referring to here, right? I know that during that week, I had at least one telephone conversation with Mr. Wadler alone and at least one other, maybe several other telephone conversations that were conference calls with several people on the line.

Q. Did he express any concern about new issues arising in China?

A. Yes.

Q. As of January 31st?

A. Oh, I'm sorry. This is before the --

Q. This is before your February 15th call.

A. My apologies. No, he never --

Q. Because you earlier testified that February 15th was the first time you heard about the new issues, right? I just want to be clear.

MR. LABAR: Objection. Leading.

THE COURT: Why don't you ask a question?

BY MR. ASPERGER

Q. So let's clarify the time. Were you a little confused by the emails because I took them out of order?

MR. LABAR: Objection, your Honor. Leading.

THE COURT: No. Overruled.

A. I was confused, yes, when you asked the question about time. This was about two weeks before the February 15th call from Davis Polk and he expressed no concern at all to me about new FCPA issues.

BY MR. ASPERGER

Q. Did he raise any questions to you about missing documents?

A. No.

Q. Did he raise any questions to you about possible discrepancies in documents?

A. No.

Q. Did he raise any questions to you about possible extra products in -- on some of the invoices or purchase orders involving Chinese transactions?

A. No.

Q. Did he ask you to review or translate any Chinese documents?

A. No.

Q. Did he mention anything to suggest that Mr. Schwartz had knowledge of bribery in China?

A. No.

Q. So I'm going to move time zones again. Let's go back to the week after your first call, and I would like to get a little bit more granular about who you talked to during that week.

So to set the scene this would be, you got the call on Friday night, February 15th. You had a number of calls over that next week, correct?

A. That's correct. And emails.

Q. And emails.

During that next week, was Mr. Wadler -- did you speak with Mr. Wadler specifically?

A. At least once. A telephone call that was only he and me -- he and I.

Q. So there was one telephone call with just you and Mr. Wadler and what was the purpose of that call?

A. I -- I believe I was trying to understand more clearly what exactly he was alleging so that we could help him resolve whatever questions he had.

Q. Was he able to express the concerns more clearly?

A. He -- he described it at some length, his request that the Bio-Rad China offices contact their distributors and agents in China and to collect documents; how long he had been requesting it, and that sort of thing, and how few documents he thought he had received back.

I think he mentioned, in general terms, the discrepancy he was identifying. And I think he discussed the fact that he had found these inconsistent distributor agreements.

Q. And did you discuss your conclusions of the results of this conversation with the Audit Committee?

A. I'm sure I did.

Q. What did you tell the Audit Committee?

A. Well, I told them that in the course of this conversation, I was trying to get more information as to, you know, specifically what documents were you requesting and think you haven't received.

Do you understand anything about the inconsistent distributor agreements, English Chinese distributor agreements? Do you have a translation of that?

Do you have any analysis of these transactions that identifies specific discrepancies?

So that we can focus on those things first and move this along more quickly. And he provided no information that was helpful. It was all very vague and really was not helpful to us.

Q. This is Mr. Wadler you're referring to?

A. Yes.

Q. And did you ask Mr. Wadler to send you any documents he had that were relevant?

A. I'm sure I did.

Q. And did he send you anything other than the documents you described?

A. Anything? I'm not sure --

Q. Well, let me ask you. If you recall, what did he send you?

A. The main thing he sent were the transactional documents on these 166 transactions. On average each transaction probably had 10, 12, 15 documents. So you're talking about 2,000 pages of documents in English and Chinese.

And he basically said -- and I remember this because I found it very frustrating. He said: Well, all the inconsistencies and discrepancies are in there. You'll find them. But he didn't -- didn't direct me to any particular transaction or document, which would have made the process a great deal simpler.

Q. Just to fast forward. Did you ultimately go through all of those documents yourself and an associate to figure out if there were explanations for the discrepancies?

A. Yes.

Q. Did you conclude that you had explanations for the discrepancies --

THE COURT: Why don't you rephrase that question?

BY MR. ASPERGER

Q. Did you ultimately -- and we're going to get into more detail on this.

Did you ultimately report to the Audit Committee and Board of Directors that you reached conclusions about the discrepancies?

A. Yes.

Q. And what did you -- did you report -- were there -- were there explanations or not?

A. For the vast majority of the transactions there were clear commercial explanations of exactly the kind we had seen in the initial investigation. And if he had simply called us, we could have answered them.

MR. LABAR: Objection. Nonresponsive.

THE COURT: I'll strike the last bit, but go ahead.

BY MR. ASPERGER

Q. Did Mr. Wadler, during this week before you went to China, mention anything about sub-distributors being an issue?

A. No.

Q. Why does that stand out in your mind?

A. Because at the end of my trip, he raised the issue in a teleconference -- we had a great many parties on the line -- and seemed extremely distressed that I had not looked at this issue, which he had never mentioned before.

Q. Once he --

A. I had just spent a week in China working 12 or 14 hours a day trying to figure out the answers to some of the questions, and the -- he made a big deal on the telephone call that -- about an issue that had never arisen before, as though I had somehow been negligent in not investigating that issue.

Q. In addition to the call that you had one-on-one with Mr. Wadler, do you recall whether he participated in any of the other telephone calls with you and the Davis Polk lawyers?

A. I'm quite sure there was at least one teleconference in which the Audit Committee -- or maybe only Mr. Drapeau, I'm not sure -- and Davis Polk and Mr. Wadler were all on the line. I'm not sure I know the exact composition of that, but I'm quite sure there was one such call.

Q. In the call that you had with him one-on-one or any of these other calls, did he mention to you that he had sent a written memorandum to the Audit Committee?

A. I don't recall that issue being mentioned, no.

Q. Did he ever suggest in any of these calls that Norman Schwartz might be involved in bribery?

A. I don't believe so.

Q. Is that information that would have been important to you before you went to China?

A. It would have been extremely important, yes.
Q. Why?
A. Because the direct involvement of senior management in any possible violations --
MR. LABAR: Your Honor, objection.
THE COURT: I'm going to stop you. That goes beyond my ruling. The question was inappropriate. I'm cautioning you, counsel, to stay within my rules.
Go ahead.
MR. ASPERGER: I apologize, your Honor. I thought that one was within the rules, but, as you said, you know, I'll...
THE COURT: Proceed.
BY MR. ASPERGER
Q. Before you left for China, did you also have a call with Norman Schwartz?
A. Yes.
Q. Do you remember when that call occurred?
A. I believe it was the following Friday afternoon or evening, at least my time in London, which would have been, what, the 22nd?
Q. February 22?
A. I think so.
Q. Did you discuss with Mr. Schwartz the claim that Mr. Wadler had made about missing documents?
A. I'm sure I did in some fashion.

Q. Do you recall what you told Mr. Schwartz about the document issues?

A. No, I don't.

Q. Okay. Did Mr. Schwartz tell you anything about Mr. Wadler's conduct?

MR. LABAR: Hearsay.

THE COURT: Overruled.

A. Mr. Schwartz said that for the past week they hadn't been able to get any additional information out of Mr. Wadler. I think he described him as having gone into a cone of silence.

MR. LABAR: Objection. Move to strike as hearsay.

THE COURT: Overruled.

BY MR. ASPERGER

Q. Did Mr. Wadler -- I'm sorry. Did Mr. Schwartz also tell you anything about the relationship between the Legal Department and Finance?

A. He said they had very bad relations, which I had known from the earlier investigation.

MR. LABAR: Objection. Hearsay. Move to strike.

THE COURT: Motion to strike is granted. That's hearsay. The jury will disregard the prior answer.

BY MR. ASPERGER

Q. Did you travel to China shortly thereafter?

A. Yes. I left the following day and flew to Hong Kong.

Q. Why did you go rather than Davis Polk?

A. Those --

MR. LABAR: Objection. Calls for speculation.

BY MR. ASPERGER

Q. I'm sorry. Let me reframe the question.

Can you explain -- did you have discussions with the Audit Committee about whether you should go or Davis Polk? And if so, why?

A. We had discussions throughout that week as to how we could move this forward most quickly. And because there were pending audit issues, they wanted someone to go sooner rather than later. And someone suggested -- I'm not sure who suggested this -- that I was in the best position to go out and obtain relevant information on a very short-term basis.

Q. Okay. In your discussions with the Audit Committee did anyone suggest this might be a conflict of interest to have you go do the investigation?

A. No.

Q. When you got to Bio-Rad's Hong Kong offices, what did you do?

A. I -- let's see. I arrived on a Sunday and I was in their offices most of Monday.

Q. And did you report to the Audit Committee what you reviewed in their offices and what the results of your review was?

A. Yes.

Q. What did you report?

A. I reported that I had gone in and asked for the documentation that they had on some of the transactions that were among the 166 transactions that -- where the documents had been forwarded to us. I wanted to see what was in the files. And I -- I found complete documentation, exactly the sort of shipping and order and documentation that you would expect to find in the company's files for these transactions.

MR. LABAR: Objection, your Honor. Opinion.

THE COURT: Overruled. It's a report to the Audit Committee.

BY MR. ASPERGER

Q. Did you report that to the Audit Committee?

A. I reported that to the Audit Committee and to the other lawyers who were looking at these issues. Davis Polk included, of course.

Q. Okay. Did you report to the Audit Committee and Davis Polk the distinction between what might be regarded as import/export transactions or Asian transactions and third-party documents?

A. Yes.

Q. What did you report on that subject?

A. One of the features that was causing concern on these transactions was the presence in these sales of a -- an intermediate company, a company that's -- the Chinese call import/export companies. The sales were structured so that Bio-Rad was selling the product to this import/export company and the import/export company was reselling it to the Bio-Rad customer; university or laboratory or whatever.

And there was a lot of confusion about the relationship among the different parties, which documents you could expect to see and which documents you wouldn't expect to see.

Q. Did you report to the Audit Committee anything about whether it appeared that Mr. Wadler understood or was confused about the documents?

A. I thought that -- I had concluded that -- yes, I reported this. I reported that I had concluded that kind of issues that Mr. Wadler was raising about the unavailability of documents indicated that he did not understand the structure of sales transactions in China.

Q. Did you report whether Bio-Rad Hong Kong was missing any significant portion of its own documents for the period from 2009 forward?

A. Well, I think I reported that all of the transactions -- in all of the transactions we had looked at, the standard documentation appeared to be present. And the Bio-Rad Hong Kong employees could retrieve that information very quickly. Gave them a transaction number, somebody would show up with a file.

We did not look at every single transaction between 2009 and 2013.

Q. But you looked at a sampling, correct?

A. Yes, large samplings, but not each and every transaction.

Q. Okay. And did you report anything to the Audit Committee about what -- about whose documents Mr. Wadler appeared to be saying were missing?

A. Yes. I mean, he -- he seemed to want documents from companies in China that were acting as Bio-Rad's agents in lining up the sale and implementing the sale. They were -- they were agents of Bio-Rad.

And he wanted the documents between this import/export company and their end user, their -- the ultimate customer, the buyer for of the product. And I told them, these were documents -- I told the Audit Committee and the other lawyers that these were documents that you would not expect Bio-Rad to have. They were third-party documents. He seemed to want to see those documents.

Q. Did you report anything to the Audit Committee about whether Bio-Rad's not having these third-party documents might be some sort of violation of the Foreign Corrupt Practices Act?

A. I don't recall in exactly what terms I reported the issue.

Q. What was the gist of what you reported to the Audit Committee on this subject?

A. I reported that, certainly in general, the Bio-Rad offices appeared to have all of the normal books and records of these sales that the government would expect to find. It would not expect to find third-party documents in Bio-Rad's files.

Q. At this point in time did you have an understanding about how the Life Tech audit might relate to your investigation?

A. Yes. I -- I had -- I understood that Life Tech was -- was demanding that Bio-Rad provide documentary evidence of the final price at which Bio-Rad's customer -- the price that they were paying for each of the transactions where a royalty was at issue.

Q. Did you report your conclusions on this subject to the Audit Committee and other lawyers?

A. Yes.

Q. And to Ernst and Young?

A. Yes.

Q. And what did you report?

A. I told them that the documentation -- in my opinion, the documentation in these files was absolutely conclusive as to what those end prices were. I did not understand why Life Tech was making an issue of it.

Q. Did you report any conclusions about how strong Bio-Rad's arguments would be on this issue?

A. I told them I thought that the arguments would be very strong, indeed.

Q. And did you report what specific information would be included in these documents that were in Bio-Rad's offices? In other words, would it include the evidence of the end user price?

A. Exactly. It wasn't one document. The prices were set out in, oh, 8 or 10 or 12 related documents. And with the exception of these occasional discrepancies that could be explained, that those -- those documents, in my view, were -- clearly demonstrated what the price was. I couldn't see why there was a problem and I didn't know why they needed more documents.

MR. LABAR: Objection, your Honor. Opinion. Move to strike.

THE COURT: Overruled.

BY MR. ASPERGER

Q. Now, you said you reported all these conclusions to the Audit Committee, to Davis Polk and to Ernst and Young. Did you also report these conclusions to Mr. Schwartz, if you recall?

A. I reported those conclusions in one way or another to Mr. Schwartz. I don't think I put him on the emails, but it's possible I did.

Q. Mr. Norton, I'd like you now to -- well, let me ask a few predicate questions.

So you said you sent email reports to various people about the conclusions you've described, correct?

A. Yes.

Q. And you gave verbal reports via telephone, correct?

A. Not while I was in China.

Q. After you got back?

A. After I got back, yeah.

Q. And you continued to give updates and reports over the course of your 2013 investigation, right?

A. Let me change my previous comment. There was a teleconference on the final day of my visit in China and there were a lot of these people on the telephone call. I'm not sure exactly who, but it certainly included the Audit Committee, Mr. Schwartz, the company's auditors, Davis Polk and others. So that was an oral report in the telephone conference.

Q. And you reported, in general, your -- the conclusions you described?

A. Yes.

Q. And was that where Mr. Wadler raised this issue for the first time of sub-distributors?

A. Yes.

MR. LABAR: Objection. Leading.

THE COURT: It's overruled. Just go ahead.

BY MR. ASPERGER

Q. I now would like to have you just look at six exhibits, and you can --

MR. ASPERGER: We don't need to put them up on the screen, your Honor. I want him to authenticate and identify them.

BY MR. ASPERGER

Q. Exhibits 124, 125, 126, 127, 128, 129, and 130. What I'm going to ask you, Mr. Norton, is: Are these emails that reflect your preliminary conclusions?

And also look to see were all of these emails sent to

Mr. Wadler in addition to all the other recipients named?

(Brief pause.)

A. Through 130?

Q. Through 130.

A. Yes. Those appear to be the email reports I sent out.

Q. And was Mr. Wadler copied on all of them?

A. Yes.

MR. ASPERGER: I move those into evidence your Honor. That's 124, 125, 126, 127, 128, 129 and 130.

MR. LABAR: No objection.

THE COURT: They are admitted.

(Trial Exhibits 124, 125, 126, 127, 128, 129 and 130 received in evidence)

BY MR. ASPERGER

Q. Now, I'd like to direct your attention to Exhibits 49 and 50, Mr. Norton. Let's start with 50.

(Witness complied.)

Q. Exhibit 50, if you look at the middle of the page, is an email from you to Martine Baemon and others dated March 8, 2013, correct?

A. Yes.

MR. ASPERGER: Move it into evidence, your Honor.

MR. LABAR: No objection.

THE COURT: It's admitted.

(Trial Exhibit 50 received in evidence)

(Document displayed.)

BY MR. ASPERGER

Q. So in Exhibit -- sorry.

Exhibit 50 states that you're attaching for them a draft report along the lines of what they had requested, correct?

A. Yes.

Q. And it says that it is providing a -- you also provide a spreadsheet with preliminary or tentative explanations for the inconsistencies in the 166 LSG sales that Mr. Wadler sent you, correct?

A. Yes.

Q. Had you and your Chinese speaking associate been reviewing those documents at this point in time?

A. That's correct.

Q. How far along were you?

A. Well, as it says, they are tentative explanations. And we had been able to take at least a quick look at each of the 166 sales, identify nature of the problems and try to figure out what they meant. But it -- it clearly indicates that we were going to look at them further.

Q. And I'll show you in a minute Exhibit 49, which is the actual report. Were you far along in your review and analysis at this point in time of those transactions?

A. Yes. I think we were reasonably comfortable with the explanations we had found, but we weren't prepared to say that

was the end of the story.
Q. And at this point in time, Mr. Norton, you're also still looking at the English and Chinese language versions relating to the distributor agreements that Mr. Wadler had identified, correct?
A. That's correct.
Q. Let's look at Exhibit 49, please.
(Witness complied.)
Q. Is Exhibit 49 your draft report to the Audit Committee?
A. Yes.
Q. And that's the March 8th report, correct?
A. It was attached to the March 8 email.
Q. The report that went to the Audit --
A. The report itself is not dated. It was a draft.
Q. It was attached to the email, Exhibit 50, that went to the Audit Committee lawyers, correct?
A. Yes.
Q. And Exhibit 50, I believe, shows that Bill Kelly sent that to the chair of the Audit Committee, Lou Drapeau, correct?
A. That's what it says, yes.
Q. At about this time were you also reporting these conclusions telephonically to the Audit Committee?
A. I was certainly talking to them regularly. If not the whole committee, at least Mr. Drapeau.
Q. So I'm not going to go through the entire report with you,

but as of March 8th, what conclusions were you reporting to the Audit Committee about the status of the issue of missing documents?

A. I was reporting that the company appeared to have all the documents it needed in its -- in its files and that there really weren't any documents that were missing.

Q. What were you reporting on the issues of discrepancies in extra products?

A. I reported that as far as we could tell, the discrepancies -- there were discrepancies in, perhaps, 20, 25 percent of the transaction documents, but that for almost all of them, we had commercial explanations as to why there were discrepancies. We understood why there were discrepancies and they weren't problematic.

Q. At this point in time were you reporting that there were any FCPA corruption concerns in any of these documents?

A. We were reporting that there were none that we could identify.

Q. And why were you reporting that?

THE COURT: So you want to rephrase that question?

MR. ASPERGER: I'm sorry, your Honor. You're right.

BY MR. ASPERGER

Q. Did you tell them why there were none?

A. Well, we told them that the FCPA requires evidence that payment has been made to a government official, and there was

absolutely nothing in the documents showing that.
Q. On the issue of the translation of the distributor agreements, were you reporting there were still open issues?
A. Yes.
Q. Did you report at this time whether or not the distributor issues in your view raised FCPA compliance issues, if you recall? Or was that later?
A. I don't recall at what point I told them that there were -- there were clearly no FCPA violations identified in these issues. There were an issue there, but they were not FCPA violations.
MR. LABAR: Objection. Opinion, your Honor. Move to strike.
THE COURT: Overruled.
BY MR. ASPERGER
Q. Now, in your deposition you were asked about a transaction where a $7,000 item had been added to a $10,000 order. Do you recall being asked that in your deposition?
A. Yes.
Q. And do you recall your testimony was that you -- at that point in time you hadn't recently reviewed the documents and didn't recall the transaction?
MR. LABAR: Objection. Leading.
THE COURT: You want to show it to him?
MR. ASPERGER: Well, I'm just -- it was actually preliminary

to set up.

BY MR. ASPERGER

Q. Did you later -- have you analyzed -- did you analyze the transaction documents at the time of your investigation relating to that transaction?

A. We did review the documents later in the investigation, yes.

Q. And was that the S-13 Bai Le transaction? Am I saying that right?

A. No. Your Chinese is terrible.

Q. I'm not surprised. Would you tell the jury what the transaction was called?

A. It's called Bai Le.

Q. Bai Le?

A. It's the name of a distributor, a Chinese distributor company.

Q. And so you say you later analyzed that transaction as part of your investigation, correct?

A. Yes.

Q. And did you determine that -- did you report to the Audit Committee that you had resolved issues in transactions like that?

MR. LABAR: Objection. Leading. Vague. Overbroad.

BY MR. ASPERGER

Q. What did you report to the Audit Committee with respect to transactions like the Bai Le transaction?

A. Well, with respect to that transaction, and I think two or three others that were not as easily resolved, we had found probable explanations for the discrepancies in the figures in the documents. Some of them were more firm than others, but it -- they didn't appear to raise -- certainly didn't appear to raise any FCPA issues.

Q. Okay. Did Mr. Wadler as of this point in time ever bring up an issue with a distributor that sometimes was called YY?

A. I don't believe so.

Q. Did he suggest to you that Bio-Rad had audit rights of YY?

A. I don't believe so.

Q. For that time period that you were investigating, did you report to the Audit Committee about whether distributors had audit rights for the transactions you were looking at?

A. I reported that under the agreements, the distributor agreements that were in place prior to at least 2011, 2012, there were no audit rights.

Q. And during the 2013 time period, did you learn the status of Bio-Rad's relationship with YY from the company?

A. Yes. We were informed that they were --

THE COURT: Let's take it a step at a time because we're going to take it a step at a time.

You learned about the relationship. Next question.

BY MR. ASPERGER

Q. Did you discuss that relationship with the company?

A. Yes.
Q. And did you have any discussions in the investigation with any Audit Committee members about YY?
A. I don't recall.
Q. Who did you learn about the status of YY from?
A. We discussed the issue of --
THE COURT: This is an issue -- this is a simple question. Who did you learn from?
THE WITNESS: I learned it from interview with the China manager, a guy named George Cao, on my second trip to China.
BY MR. ASPERGER
Q. Did you report the results of that second trip and what you learned to the Audit Committee or the Board?
A. Yes.
Q. What did you report on YY?
A. I reported that we had -- that we had been informed on the trip that YY had been terminated for commercial reasons.
And I reported that we -- by "we" it was myself and two lawyers from Davis Polk -- had interviewed a former Bio-Rad employee in Beijing who was responsible for the relationship with YY.
Q. So did you report on whether you could get documents or whether it was likely you would get documents from a terminated distributor?
A. I -- I think I mentioned that, yes.

Q. And what did you say? Did you say it was likely or not?

A. I said it's -- it's not only unlikely, but extremely unlikely that a recently terminated distributor was going to produce documents for you.

Q. Okay. I want to go -- I'm sorry to do this out of order, but I want to go back in time again to the call you mentioned on February 27th.

A. Yes.

THE COURT: What year? '13?

MR. ASPERGER: I'm sorry, your Honor?

THE COURT: What year?

MR. ASPERGER: February 27th, 2013.

THE WITNESS: Yes.

MR. ASPERGER: And it is reflected in both Exhibit 46 and 76. I think I have 46 in the binder, in your binder, your Honor, but I think 76 is the one that's in evidence. Am I right?

So let's just do this. Since we've got 46, let's do 46. May I introduce that into evidence, your Honor? It's the same as 76.

MR. LABAR: No objection.

THE COURT: Okay. Admitted.

(Trial Exhibit 46 received in evidence)

(Document displayed.)

BY MR. ASPERGER

Q. Okay. This was the call that you had, I believe, Mr. Norton, as you described it before you left Hong Kong or Shanghai, correct? Which was it?

A. I was -- this is a summary of the call prepared by Mr. Wadler's office. And the call itself was the morning I -- at the end of my first trip. I was leaving Shanghai, going back to Europe.

Q. And where were you? Were you in your hotel room, a taxicab or what?

A. There had been a lot of trouble scheduling the call because there were so many different people in different time zones. So they picked a time where I started the call for maybe 15, 20 minutes in my hotel room in Shanghai and then I had to catch a taxi to the airport. And I dropped off the call for a couple of minutes, got in the taxi, and the remainder of the call that I was on -- I think it continued -- I was sitting in a taxi on a cell phone.

Q. And at the time of this document, Mr. Schumaker didn't give it to you to review for accuracy, correct?

A. That's correct.

Q. Is this one of the calls in which you reported your conclusions to the Audit Committee, Ernst and Young and a whole host of other people that are listed in Exhibit 46?

A. Yes.

Q. And that included Norman Schwartz, correct?
A. I believe he was on the call, yes. His name is on there.
Q. Is this the call where Mr. Wadler for the first time raised the sub-distributor issue?
A. Yes.
Q. And then I'd also like to direct your attention further down the page. It might be on the second page.
MR. ASPERGER: Can you...
(Document enlarged.)
BY MR. ASPERGER
Q. Yes. Do you see there is a bullet point on the second page that:
"Wadler asked Norton if he found the amount of the discrepancies troubling and if he had questioned the current whereabouts of extra products shipped."
Do you see that?
A. Yes.
Q. (As read)
"And if there were any perceived motives for providing extra products, including bribery."
Do you see that?
A. Yes.
Q. (As read)
"Norton stated he had not analyzed possible FCPA concerns related to any potential extra products."

Do you see that?
A. I see that.
Q. Is that accurate?
A. No.
Q. How do you know that's not accurate?
A. Because it confuses two completely different issues, and I recall discussing both of those issues distinctly during the call.
Q. What do you recall discussing?
A. Well, the first issue was that Mr. Wadler believed that some of the transactional documents showed that extra products had been shipped at no cost. That issue is the -- this discrepancy between how products or characterized for one purpose or another.
I had concluded -- and I'm positive I said this on the phone -- that, in fact, there were no extra products in those transactions.
Q. And did you --
A. And I had explored it quite thoroughly.
The second category of discrepancies that he mentioned was shipping documents that showed free products being added. And I told him I had not looked at those documents further or investigated them further because if you simply looked at the documents, you saw that they were very minor -- the value of the products was quite minor compared to the larger transaction and

it appeared that they were simply a favor tossed in to the customers. It didn't look like a corruption issue at all.

Q. So did you report on this call whether either of these issues raised Foreign Corrupt Pratices Act concerns?

A. I said that as far as I could determine, they did not.

Q. So I'd like you now to look at Exhibit 7.

(Document displayed.)

Q. Exhibit 7 is the report that Mr. Wadler made to the Audit Committee on February 8th, correct?

A. That's my understanding.

Q. And have you reviewed that carefully at this point?

A. Yes.

Q. And did you also review the attached documents to this exhibit?

A. Yes.

Q. Did you determine that the attached documents are documents that you reviewed in the course of your investigation in 2013?

A. Yes.

Q. And did you report to the Audit Committee on the results of that document review?

A. We reported on the overall review. I don't recall reporting in this specific transaction. It was included in the things we had looked at.

Q. So I'd like to direct your attention initially to the fourth paragraph. The fourth paragraph states:

"The genesis for my concerns come from two sources."

Is that correct?

A. Yes.

Q. And those are Mr. Wadler's concerns, correct?

A. Yes.

MR. LABAR: Objection. Lacks foundation. Opinion.

MR. ASPERGER: I'm going to lay the foundation, your Honor.

THE COURT: Go ahead.

BY MR. ASPERGER

Q. It says:

"First, Bio-Rad has a licensing agreement with Life Technologies, a significant competitor. As part of the agreement -- of that agreement periodic audits are authorized to ensure that Life Technologies is being paid the proper amount of licensing fees. During the course of an audit, Bio-Rad was unable to provide the licensing auditors many types of documents that should have been available."

Do you see that?

A. Yes.

Q. Did you report to the Audit Committee your conclusions on this issue even though you hadn't seen this document at this time?

A. Yes.

Q. What did you report?

A. I reported that this allegation was misrepresented throughout large parts of the investigation. There were a lot of documents missing.

In fact, the documents I had found were not missing. And it -- it turned out in the investigation that Mr. Wadler was looking for specific categories of third-party documents that I would not expect Bio-Rad to have.

Q. The paragraph continues:

"This was very disturbing because for those sales overseas, FCPA has statutory books and records requirements. The company's inability to provide the documents could itself be considered a substantive and clear violation of those books and records requirements."

Do you see that?

MR. LABAR: Objection. Opinion.

A. Yes.

BY MR. ASPERGER

Q. Did you report to the Audit Committee and Board of Directors your conclusions on this issue?

MR. LABAR: Objection. Opinion. Foundational.

THE COURT: Overruled.

MR. LABAR: (Inaudible.)

THE COURT: I understand that. But that's been discussed

before. It's reporting on the issue, not on this document.
Go ahead.
A. I reported to the Audit Committee that there were no documents missing from the company's files that would be considered a violation of the FCPA books and records.
BY MR. ASPERGER
Q. Okay. Let me direct your attention to the next paragraph. It starts at the bottom of the page and then continues. It says:

"In late December 2012 I did receive a translated document that was uncovered during the search for documents in the Life Technologies audit. These documents, which I have attached, disclose to me the following.

"They show that a public university in China is doing business with a Bio-Rad distributor. The distributor is billing the university for two products at approximately $10,000. However, the distributor is sending a purchase order to Bio-Rad for five products for the same $10,000. Bio-Rad is shipping the five products. This scheme suggests several possibilities for bribery."

Do you see that?
A. Yes.
Q. Is that one of the issues that you were looking at and

reporting to the Audit Committee about?

A. Yes.

Q. And it says:

"First, the distributor ships the two products to the university and then bribes the individual at the university who make the purchase with some or all of the remaining three products delivered."

Do you see that?

A. Yes.

Q. So is the issue -- one of the issues you were focused on was these issues of whether, in fact, there were extra products correct?

A. That's correct.

Q. And you said you had analyzed the documents that were attached at the time in 2013 and reported your conclusions based upon your analysis, correct?

A. That's correct.

Q. Based on your analysis, did you conclude there were any FCPA violations even suggested in these documents?

MR. LABAR: Objection. Foundation.

THE COURT: Sustained.

BY MR. ASPERGER

Q. Did you explain to the Audit Committee whether there was a basis for believing there was an FCPA violation in these documents?

A. Yes. I told them there -- there was no violation of the FCPA in these documents, shown in these documents.

Q. Let me direct your attention to the first page of the documents, 9222. And let's focus on the list of the products.

(Document displayed.)

Q. Did you see there is a list of two products that are identified?

A. Yes.

Q. What are the two products?

MR. ASPERGER: Can we highlight the names please and the prices?

(Document highlighted.)

A. Well, the first product is a Mycycler. Frankly, I don't know what that is.

Q. And what's the second product?

A. It's described in the English translation, which is not completely accurate, as the "Power Pac Bai Su Power Supply."

Q. And if you look at the price, the price of product number one is $6,000, correct?

A. Yes.

Q. The price of product number two is $4,100, correct?

A. Yes.

Q. For a grand total, which isn't list there, of $10,100, correct?

A. Yes.

Q. And the numbers over to the right, where it's 71,811, what are those numbers? You don't need to read the amounts, just tell the jury what they are?

A. Those are the same amounts in Chinese currency.

Q. And would you look at the Chinese characters that are in the second column as part of item two, listed as part of item two? The last two characters, what do they say?

A. They say xi tong, which means system.

Q. And is the system spelled out in the remainder of the documents that are attached to this exhibit, Exhibit 7?

A. Yes. There are a total of four Bio-Rad products which make up the power supply system for the same price of $4,100.

Q. Does that raise any FCPA issue?

A. No.

MR. LABAR: Objection, your Honor. Leading.

THE COURT: Sustained. Rephrase that question. Strike the last answer.

BY MR. ASPERGER

Q. Based upon the presentation that you gave to the Audit Committee and the Board of Directors, did you explain that this -- that this raises no FCPA issue?

A. I don't believe I discussed this particular transaction with the Audit Committee. I discussed the general set of transactions that had discrepancies like this, but I don't remember this particular one.

MR. LABAR: Objection --

BY MR. ASPERGER

Q. And was this transaction --

MR. LABAR: Your Honor --

Q. -- included in your summary that was given to the Audit Committee?

THE COURT: So let there be an objection.

MR. LABAR: Objection, your Honor. I move to strike his testimony on these questions related to this document given that answer.

THE COURT: Sustained.

MR. LABAR: Limiting instruction, your Honor.

MR. ASPERGER: Your Honor --

THE COURT: So I'm going to strike all of the answers regarding these documents. There is no evidence. And the jury is instructed to disregard all the testimony of this witness regarding these documents.

Go ahead. Next question.

If you want to get at it some other way. The way you've gotten at it has proven to be ineffective. So try to do it some other way, that's okay.

MR. ASPERGER: Okay.

BY MR. ASPERGER

Q. So did you analyze -- Mr. Norton, as part of your investigation that you were conducting in response to

Mr. Wadler's allegations in 2013, did you analyze this transaction specifically and many transactions like it?

THE COURT: Let's -- let's start with that first piece.

BY MR. ASPERGER

Q. Did you analyze this transaction specifically?

A. Yes.

Q. Did you prepare a report that summarized the results of this transaction?

A. This was one of the entries in the report, yes.

Q. Did you analyze many other transactions similar, that raised similar issues to this transaction?

A. Yes.

Q. And did those summaries -- were those summaries included in your report?

A. Yes.

Q. And did you report with some degree of specificity to the Audit Committee and the Board of Directors your conclusions about these transactions?

MR. LABAR: Objection, lacks foundation.

THE COURT: That's a general question. You can answer that.

A. Yes.

BY MR. ASPERGER

Q. And does this particular transaction, was this included for the basis of your conclusions?

A. This was -- yes, this was one of a number of transactions that was the basis -- formed the basis for my conclusions.

MR. ASPERGER: Your Honor, is that sufficient to go into the documents?

THE COURT: No, it's not. Proceed.

BY MR. ASPERGER

Q. So let's move to the notion of the general issue of the documentation that is included in -- that you reported to the Board of Directors and the Audit Committee on, okay?

A. Okay.

THE COURT: So can I ask you, you need to find a convenient breaking point. It doesn't have to be now.

MR. ASPERGER: This might actually be a good one, your Honor, because I think we can then clarify where we go from here.

THE COURT: Okay. Good.

All right. Ladies and gentlemen, that will be the end of the day. See you here bright and early tomorrow morning. Thank you for your close attention today.

(Jury exits the courtroom at 3:15 p.m.)

THE COURT: All right. So the reason I struck that testimony is because the foundation that I would need for the testimony about the specific documents is that he told the Audit Committee about the specific documents. Because I don't want him to do some analysis on the stand, which he was doing, about what the documents mean because that requires a special expertise and is not part of what he communicated to the Audit Committee.

In fact, to the contrary. He said he did not communicate to the Audit Committee specifically about this document -- these documents. If he did, well, that's a different thing and then you can go into it. But that was the line I'm drawing.

MR. ASPERGER: So, your Honor, here is the problem we've got. He looked at these documents. His Chinese associate looked at these documents. Davis Polk looked at these documents. They analyzed many, many transactions and they concluded that there was no basis for the allegations and reported that to the Board of Directors and the Audit Committee.

THE COURT: And that testimony has been given.

MR. ASPERGER: And then this specific document is emblematic of exactly the problem that we have. And it's been raised by them specifically.

For example --

THE COURT: Oh, I know they've raised it specifically. You don't have to convince me.

MR. ASPERGER: Okay. So I -- I would respectfully submit, your Honor, it doesn't require expert testimony to -- it's a percipient fact witness, for someone to go through the and to explain why it is obvious to anyone who basically understands the facts here why this isn't a problem. And if Mr. Wadler had simply asked somebody, there would never have been an issue relating to these types of transactions.

And he can go through -- they've raised -- he said in his direct testimony there was a term called *under the covers*. There is no term called *under the covers* in Chinese transactions.

The next document I was going to show was the order cover. And then there are the other documents that give the details and spell out what the system is underneath that order cover. There is nothing nefarious or suspicious whatsoever about these documents. And those are critical percipient facts that need to go to this jury.

MR. WAGSTAFFE: Your Honor, Rule 26 three years ago separated out experts who are retained and experts who are not retained who are being asked to give opinion testimony. And as your Honor knows, as to that second category a report is due and disclosure is required.

Let me start by saying what's happened with other witnesses does not affect any of this. Objections can or could have been made. They were not.

So this is a witness who is bringing to bear his expertise. I must say, throughout his entire testimony, but on this subject, in particular, his expertise. This is not lay opinion. This is someone who did not communicate to this Board. He told us he didn't on this document. And he's being asked to do exactly what an expert would do and analyze it based on his experience.

And so, therefore, I think your Honor's limitation on this particular document is correct.

MR. ASPERGER: Your Honor, what he is doing is -- that's just wrong.

What he is doing is he's saying: I reported to the Board of Directors and the Audit Committee these conclusions and I analyzed dozens of transactions to reach these conclusions. And factually I looked at this specific document back in 2013 and it was obvious to me --

THE COURT: Well, it's the next -- it's that last bit, right? I reported to the Audit Committee. My opinion was this. I -- in order to do that opinion, I specifically looked at a lot of documents and I looked at these particular documents.

And then the next question you want to ask is: What do these documents say?

I can't tell what that document says. I can't tell what that document says. Your allegation is that Mr. Wadler couldn't tell what that document says actually. It requires the special expertise of somebody who knows how these documents are to be read and who reads Chinese.

So I'm not understanding why it isn't the province of the expert opinion to say what these commercial documents mean.

MR. ASPERGER: But, your Honor, this is why I think the -- the line between the percipient witnesses --

THE COURT: I'm not changing the line. I read the cases this morning. You have not persuaded me that a percipient witness who is going -- wants to give opinion testimony is anything other than a person who has to give the disclosures. So you didn't give the disclosures. He doesn't get to give any expert opinions.

Now, that said, if he communicated those expert opinions on a relevant subject to the case, I'm allowing that. That's what he's -- and that's been 99 percent of what he has talked about, 100 percent of what he's talked about, other than this so far. That's fine.

But I'm not going to get behind that analysis and say: The reasons why I said that were, when he didn't communicate those reasons.

That's what I said you to before, I'm not going to get him involved in his expert -- using his expertise to show why he reached that conclusion, unless the why went to the -- was communicated, because that's the subject of expert testimony.

That's -- you know, Mr. Norton is a world-renowned expert in FCPA stuff. That's why he can do this. That's why he can figure out what these things say.

MR. ASPERGER: Well, he was the one who looked at these issues back in 2010 and '11, as the Court knows. He was all over them. It would have been very easy for Mr. Wadler to simply pick up the telephone and find out if this raised any issue whatsoever.

THE COURT: And you've already made that point. You cross examined Mr. Wadler and made that point several times.

This is a different point. You want to put substantive opinion testimony on what the documents mean in this FCPA context. And I'm not going to permit that, unless it was communicated to -- unless it was communicated.

MR. ASPERGER: So let me do this then, your Honor. I hear what the Court is saying.

I will speak further with Mr. Norton and do my best to lay the proper foundation and inform the Court where we stand tomorrow morning.

THE COURT: Yeah. Tell me before we start where you are.

MR. ASPERGER: Yeah. I will.

THE COURT: I don't like to go through these things in front of the jury. I know it's embarrassing for you. It's uncomfortable for the jury. I don't want to do it for a lot of reasons. So let's talk about it before --

MR. ASPERGER: Right. And I really thought this was on the side of the line that was clearly permissible, your Honor.

THE COURT: I know. I'm not -- you strayed over the line a couple of times, but you pulled back and I think it's because you think that's where the line is. I'm not saying --

MR. ASPERGER: I'm trying very hard, your Honor.

Your Honor, may I raise one other thing for your consideration --

MR. WAGSTAFFE: Your Honor, may I just be heard for one second?

THE COURT: Yes. Let him talk about what we have been talking about.

MR. WAGSTAFFE: All I will say for the record are two things.

One, your Honor, is this witness has already testified that he has not presented to the Board. I think that's -- the foundation is now established by his sworn testimony, the absence thereof.

Second, for the record, your Honor, while we understand your Honor's line, we believe the line should be further and we have objected to --

THE COURT: No, no.

MR. WAGSTAFFE: -- the testimony, just for the record.

Thank you, your Honor.

THE COURT: No, no, no. I understand I'm making everyone unhappy. That's part of the job.

MR. ASPERGER: So I am concerned that we have a double standard here because Mr. Wadler did testify about his understanding of *under the covers* --

THE COURT: Mr. Wadler's state of mind is at issue. This witness' state of mind is not at issue.

MR. ASPERGER: No. I understand that, your Honor. I get that.

THE COURT: So that's why he gets to say things he communicated to others because their state -- because Mr. Schwartz's state of mind is at issue. To some extent the company's state of mind is at issue. Mr. Wadler's state of mind is at issue.

He can testify as to what he thought because you're going to have a discussion with the jury about whether he reasonably believed that these were violations of the Foreign Corrupt Practices Act.

His state of mind is at issue. It's not a double standard. Two different situations.

MR. ASPERGER: All right. Let me -- let me get back to the Court in the morning on this.

THE COURT: Okay. So can I ask a different question? Where are we? So you're going to continue with Mr. Norton's examination --

You can step down if you'd like, Mr. Norton. We're done with you for today.

THE WITNESS: Thank you, your Honor.

THE COURT: You don't have to, but you can.

(Witness steps down.)

THE COURT: So Mr. Norton continues. Do you know how much longer? I suppose it depends. You'll be with Mr. Norton, do you know how much longer on your direct?

MR. ASPERGER: Let me give you an estimate, your Honor.

THE COURT: Yes.

MR. ASPERGER: Maybe a half hour.

THE COURT: Okay.

MR. LABAR: Hour, your Honor.

THE COURT: Okay. So that's an hour and a half. That will take us to our break. And then what happens?

MS. KRAMER: Colleen Corey will be next, your Honor.

THE COURT: And how long will Ms. Corey's testimony be?

MS. KRAMER: It's going to be about an hour.

THE COURT: Okay. And then some cross.

MR. WAGSTAFFE: One hour of cross, your Honor.

THE COURT: All right. So then we're most of the way through tomorrow.

Who is after Ms. Corey?

MR. LANDES: It will be either Mr. Drapeau or Ms. Tsingos.

MR. WAGSTAFFE: Your Honor, that makes a big difference for us for our night tonight. Perhaps --

MR. LANDES: They were both disclosed.

THE COURT: Well, I know that, but who is your --

MR. LANDES: I'm thinking, I expect it will be Drapeau first, Mr. Drapeau.

MR. ASPERGER: Drapeau, your Honor.

MR. WAGSTAFFE: Thank you.

THE COURT: And that will take us through tomorrow.

MR. WAGSTAFFE: Certainly through tomorrow.

THE COURT: Okay. Thank you.

Anything else we should take up today?

MR. WAGSTAFFE: No, your Honor.

MR. POTTER: Your Honor, there actually is one housekeeping matter. Let me bring to it your attention. It relates to a witness.

MR. ASPERGER: Your Honor, I need to move in Exhibit 49.

THE CLERK: I was just going to ask that question.

THE COURT: 49 is the draft report to the Audit Committee.

MR. ASPERGER: Correct.

THE COURT: That was attached to 50, I think.

MR. ASPERGER: Right.

THE COURT: And 50 is in evidence. Any objection?

MR. LABAR: No objection.

THE COURT: Okay. 49 is in evidence.

(Trial Exhibit 49 received in evidence)

MR. WAGSTAFFE: Your Honor, I think we preserve the objection to -- to lay the foundation for the Exhibit 7 with this witness. That was the audit -- the report from Mr. Wadler to the Audit Committee.

This witness advised us in deposition under oath that he never saw it and had not even seen it. Just for the record, your Honor. I understand your ruling, but for the record I don't want to be accused of -- and Mr. Labar did object, but we object to using a document he never saw.

THE COURT: No, no. That objection is preserved.

MR. WAGSTAFFE: Okay. Thank you.

THE COURT: And I overruled it because I thought it was an appropriate way to get into the subject, since he investigated the subject.

MR. ASPERGER: So, your Honor, assuming I can't lay the foundation, I just want to make sure I understand where the line is drawn here.

The line would be drawn on striking the testimony about the attached documents. The questions I asked --

THE COURT: No, no, no. That's right.

MR. ASPERGER: All of the questions I asked about the text of the document: You investigated these issues. You reported on these issues. Those are all --

THE COURT: Those are fine. And look at the transcript when you get it and if you think I need to make a clarification, I would be happy to do that.

MR. ASPERGER: I'm hoping I can convince you that there is a foundation, your Honor.

THE COURT: Even better. All right. Thank you.

(Whereupon at 3:27 p.m. further proceedings were adjourned until Wednesday, January 25, 2017 at 8:00 a.m.)

CERTIFICATE OF REPORTERS

We certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

______/s/ Debra L. Pas ______________

Debra L. Pas, CSR 11916, CRR, RMR, RPR

_______/s/ Belle Ball _____________

Belle Ball, CSR 8785, CRR, RMR, RPR

Tuesday, January 24, 2017